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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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RESERVATIONS: 202–523–5240

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

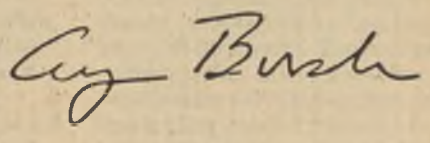
Presidential Determination No. 91–40 of June 5, 1991

Presidential Determination Under Subsection 2(b)(2) of the Export-Import Bank Act of 1945, as Amended—Bulgaria

Memorandum for the Secretary of State

Pursuant to subsection 2(b)(2) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(2)), I hereby determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product by, for use in, or for sale or lease to Bulgaria.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 5, 1991.

[FR Doc. 91–15009
Filed 6–19–91; 3:47 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930 and 1944

RIN 0575-AA62

Farm Labor Housing Loan and Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Farm Labor Housing Loan and Grant Regulations. This action is taken to provide the opportunity for retired or disabled farm laborers to occupy housing financed under the Farm Labor Housing program if not needed by active farm laborers and to remove criteria related to type of employer from the definitions of farm labor. The intended effect is to conform the regulations to authorizing legislation for the farm labor housing programs (section 305 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) and section 1043 of the Omnibus McKinney Homeless Assistance Act of 1988 (Pub. L. 100–628)).

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, or John H. Pentecost, Chief, Special Authorities Branch, Multi-family Housing Processing Division, FmHA, USDA, Washington, DC 20250, telephone (202) 382–1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background/Discussion

On April 13, 1989, Farmers Home Administration published a proposed rule (54 FR 14822) to amend FmHA Instructions 1944–D, "Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations," and 1930–C, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients." The proposed rule invited comments for 60 days ending June 12, 1989. The purpose of the revisions was to bring the regulations into conformance with revisions to authorizing legislation for the farm labor housing programs (section 305 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) and Section 1043 of the Omnibus McKinney Homeless Assistance Act of 1988 (Pub. L. 100–628)).

The intended effect of the revisions is to provide the opportunity for retired or disabled farm laborers to occupy housing financed under the Farm Labor Housing program when not needed by active farm laborers and to remove criteria related to type of employer from the definitions of farm labor. In addition, the program regulations need to establish a process for use of farm labor housing units by non-farm laborers when demand by farm laborers diminishes to the point of jeopardizing the viability of the facility.

Discussion of Comments

Eleven letters were received from interested parties in response to the Agency's request for specific comments on the policies proposed, especially concerning the definitions of "disabled" and "retired." One respondent did not address the issues of the proposed rule and was not considered. Two respondents were late, however, their comments were pertinent and are considered in the final rule. Overall, the comments were supportive of the Agency's policies and direction, and where there were recommendations for changes, the writers made very constructive contributions.

Based on the comments, FmHA has revised the proposed rule in part, most critically in terms of age of retirement, documentation for "disabled" farm laborer eligibility, and definition of "farm laborer." The following is a discussion of the comments by general topic areas and such comments' impact on the proposed rule:

1. Definition of "Retired" Farm Laborer (Age and Activities)

Seven comments were received on using 55 years of age rather than 62. Those in favor of a lower "retired" age for farm laborers applauded the Agency's recognition of the physical rigors of farm work. Those opposed indicated that sawmill workers, miners, steelworkers and other physically demanding careers probably had as difficult and demanding jobs as farm laborers. There was also one comment by a current manager of farm labor facilities about the problem raised by a retired, 55 year-old farm laborer continuing to work outside of farm labor while still being eligible to live in farm labor housing. The point was also made that farm laborers generally worked in some less physically stressful aspect of farm work as they became older.

The Agency considers the primary intent of the farm labor housing program is to serve active farm laborers. The legislation clearly indicates this priority. The Agency is aware that persons aged 55 to 62 may still be physically able to perform some aspect of farm labor. However, occupancy by retired farm laborers is predicated on a diminished need by active farm laborers. The Agency believes the retirement age of 55 to be an age generally recognized as the threshold age to elderly status. Age 55 is recognized as being eligible for such programs as Meals on Wheels. For Native Americans age 55 is considered elderly by the Bureau of Indian Affairs. The Agency will use age 55 as the minimum age for consideration of eligibility as a "retired" farm laborer.

2. Definition of "Disabled" Farm Laborer

Seven of the ten respondents made comments on the definition of a

"disabled farm laborer." Three supported the definition as it was presented. Two requested greater specificity in defining a farm laborer as "substantially" disabled to perform farm work. Two requested that the Agency remove the time period to demonstrate that one was a farm laborer prior to becoming disabled in order to be considered a "disabled" farm laborer.

While the need for greater specificity may be desired, most comments supported the overall thrust of this definition. The Agency interprets the legislative mandate to maintain more flexibility and considers the definition of disabled to encompass farm labor. Therefore, disabled farm laborer is not defined under the same criteria as a "disabled" person as used under the section 515, Rural Rental Housing Procedures. Accordingly, the Agency has kept this aspect of the definition as it was proposed; should experience indicate abuse or its impracticality, the Agency has the option to revise it in the future to be more specific.

The other point raised in the responses was that a disabled farm laborer should be treated differently than a retired farm laborer and not have to meet as rigid a time period as a farm laborer in order to be eligible. The majority of the comments on this point supported this view. Accordingly, the Agency has revised the regulations to require that a disabled farm laborer need only be an eligible "domestic farm laborer" when disabled to qualify as a "disabled farm laborer."

3. Documentation of Eligibility for "Disabled" or "Retired" Farm Laborer

Three commenters asked for more flexibility when it came to documentation of experience as a farm laborer when going back more than a couple of years. Since we have accepted the comment concerning "disabled farm laborers" needing only to be eligible as domestic farm laborers at the time of becoming disabled, this now applies to only retired farm laborers. The Agency agrees that self-certification and affidavits may be used as a last resort. The final rule has been revised accordingly.

4. Definition of "Farm Laborer"

Four comments were received raising issue with FmHA's use of the word "employed" in the definition of "domestic farm laborer." One of the principle legislative mandates this rule implements is the removal of the requirement that a farm laborer be employed by a "farmer." The law and the regulations recognize that changes in the agricultural workplace have created a variety of employment opportunities and mechanisms for those persons doing farm labor. In lieu of defining the variety of employment relationships, the proposed regulation stipulated that a domestic farm laborer be an "employed person (not self-employed)." The intent is that the applicant for housing be a person that earns his or her income from farm labor in an employer-employee relationship, not that such person be specifically employed at the time of application. The applicant's work records should reflect such farm labor employment over the prior 12 months, whether employed at the time of application or not, that would support a finding of his or her eligibility as a domestic farm laborer. This has been clarified in the final rule.

Additional comment was made by two of the four respondents that tests for such employment should be individually determined in the absence of employment and income documentation with W–2 forms. The Agency was advised that this is especially important where the local agriculture employment practice is to use a contractual or share-crop relationship rather than a conventional employment relationship and where the documentation is with an IRS Form 1099, "Report of Contractual Wage Paid." In such cases, the actual work must be the same as if employed by the farmer, though the payment and documentation for such payment may be different. The procedure in its final form has been clarified for this area and requires application of IRS's Common Law rules regarding self-employment.

There was no disagreement with continuing to prohibit "self-employed" persons who do farm work from being eligible for the benefits under the labor housing program. Again, distinguishing between contract farm laborers and self-employed farm laborers will require analysis of local employment practices for farm work.

Further comment was made on the limited range of activities under defined "farm labor." These have been expanded slightly to address those concerns and to include the broadest spectrum possible of those persons involved in "the primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage," as stated in the program' s authorizing legislation. The Agency has searched for an overall definition of agricultural commodities or products and has failed to find one. Therefore, rather than limiting farm labor by products, types of operations, etc., FmHA has determined to keep the broadest latitude by keeping the term "farm labor" undefined any further than the legislation. Questions on specific products and types of operations will continue to be handled on a case-by-case basis.

One respondent recommended defining "commercial" as used in the activities not considered farm labor. Rather than attempting to define commercial, the Agency added "processing." Similar to the intent to enable persons engaged in farm labor to be eligible regardless of employment, those engaged in processing would be ineligible regardless of employment.

5. Definition of "Substantial Portion of Income" for Farm Labor Eligibility

Seven respondents made recommendations for this area. The Agency did not solicit specific comment on this area nor has it revised the procedure which would open the door for the changes proposed by the respondents. However, it is obviously causing difficulties for the program and needs to be addressed. The comments will be taken under advisement for the regulation revision proposed for this program in the October 1, 1990, **Federal Register** (55 FR 39982).

6. Priorities Established for Initial Occupancy

Two respondents asked that the final rule reflect equal priority for occupancy between active, retired, or disabled. Another asked that priority in all three areas be established based on percent of farm labor income to total income immediately prior to application for tenancy. Another asked that a high percent retired farm laborer should receive preference over a low percent active farm laborer.

Basically, while these comments have some merit, the law itself establishes the order of priority for occupancy of vacant units.

A farm laborer household becomes eligible for FmHA farm labor housing on the basis of one or more of the adult household members being an eligible active farm laborer or a retired or disabled farm laborer. Once a household has been determined eligible, priority for occupancy or filling of vacancies will be based on the priority order established in the final rule. Only in the case of active farm laborers is further priority established based on percent of farm labor income to total household income. The only preferences established for retired or disabled farm laborers is based on where such person worked, with preference established in law for those active in the local farm market area.

Income documentation is difficult even for active farm laborers and the respondents to the proposed rule cited additional verification problems for income and farm worker eligibility for retired or disabled farm laborers. Therefore, the Agency sees little gain (and much trouble for managers) in requiring further prioritization of retired and disabled farm laborers by percent of household income from farm labor prior to their retiring or becoming disabled.

Once the category of eligibility (active, retired, disabled) is established, the rental benefits and subsidies are based on the total household income. In addition, such income may not exceed the moderate income levels of the community.

A retired or disabled farm laborer who currently resides in the facility will not be displaced in favor of an active farm laborer.

7. Process for Permitting Use of Units by Section 515 Eligible Tenants in Lieu of Farm Laborers

Three commenters called for greater specificity in this area in terms of who would determine that a market no longer exists for housing for farm laborers and what documentation would be acceptable. The Agency agrees that in this case greater control is needed to protect the few units nationally available for farm laborers and has modified the procedures to require National Office concurrence and to mandate specific information to be provided by the owner of the labor housing facility to document the lack of long-term need by farm laborers, either active, retired or disabled. Such a study would also define the farm market area.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under Numbers 10.405, Farm Labor Housing Loans and Grants, and 10.427, Rural Rental Assistance Payments (Rental Assistance), and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

The Administrator has determined that this final action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. The action will only affect a small number of rural communities.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, and Reporting requirements.

7 CFR Part 1944

Farm labor housing, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B of Subpart C is amended by revising paragraphs VI B 1 g, VI B 5 b, and paragraph VII C 1; and adding paragraphs VI B 1 n, VI C 3 g, VI D 2 f, and VI F 5 to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

B. * * *

1. * * *

g. In LH projects designed and operated either for year-round or seasonal occupancy, eligibility is established in subpart D of part 1944 of this chapter.

* * * * *

n. A domestic farm laborer may continue occupancy of an LH project after retirement (having reached age 55) or after becoming disabled (determined to have an impairment which is expected to be of long-continued and indefinite duration and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician)).

* * * * *

5. * * *

b. Tenants in LH projects who no longer meet the farm labor occupation requirements, and who are neither retired nor disabled domestic farm laborers, are considered to be "formerly eligible tenants" as long as a need for housing for domestic farm laborers exist in the project's farm market area

* * * * *

C. * * *

3. * * *

g. In LH projects, lists should be maintained in accordance with the priorities of occupancy established by § 1944.154 of subpart D of part 1944 of this chapter.

* * * * *

D. * * *

2. * * *

f. Retired or disabled domestic farm labor applicants must meet the definition requirements of § 1944.153 of subpart D of part 1944 of this chapter.

* * * * *

F. * * *

5. In LH projects, paragraphs VI F 1 and 2 of this exhibit do not apply. The priorities for tenant's occupancy established by § 1944.154(a) of subpart D of part 1944 of this chapter and the processes mandated by paragraphs VI F 3 and 4 of this exhibit will be used. However, when FmHA concurs with the LH borrower's determination that there is a diminished need for housing for domestic farm laborers in accordance with § 1944.154(b), all the provisions of this paragraph are applicable to initial occupancy by applicants eligible only under the RRH program.

* * * * *

VII. Verification and Certification of Tenant Income and/or Employment:

* * * * *

G. * * *

1. Verification of income is required for all occupants of LH projects. When tenants do not have easily verifiable income, the borrower may project monthly income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance. Self-certifications and affidavits may be accepted. Records from Migrant Health Centers or other public or private farmworker support services are also acceptable.

* * * * *

PART 1944—HOUSING

3. The authority citation for part 1944, continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

4. Section 1944.152 is revised to read as follows:

§ 1944.152 Objective.

The basic objective of the Farmers Home Administration (FmHA) in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing for domestic farm labor to be located in areas where a need for farm labor exists and in making LH grants where there is a pressing need for such facilities in the area for farm laborers and there is a reasonable doubt that the housing can be provided without the grant assistance.

5. Section 1944.153 is revised to read as follows:

§ 1944.153 Definitions.

Applicant. The applicant for or the recipient of an LH loan or grant.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Board and directors. Includes the governing body and members of the governing body of an organization.

Construct or repair. To construct new structures or facilities, or to acquire, relocate, or repair or improve existing structures or facilities.

Development cost. Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges, and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. For all types of LH applicants, other than the individual farmowners, family farm corporation and partnerships, and associations of farmers, the development cost may include initial operating expenses of up to 2 percent of the permitted costs.

Domestic farm laborer. A person who receives a "substantial portion of his or her income" performing farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person. (See the definition for Self-employed in this section and/or exhibit L of this subpart which is available in any FmHA office.)

Familial status. (See subpart E of part 1944 of this chapter or subpart C of part 1930 of this chapter.)

Family farm corporation or partnership. A private corporation or partnership in which at least 90 percent of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the State,

(2) Legally able to carry out the purposes of the loan, and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm labor. For purposes of this subpart, farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity.

Farm Labor Contractor. Any person—other than an agriculture employer, an agricultural association, or an employee of an agriculture employer or agriculture association—who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any year round or migrant farm laborer.

Farm owner. A natural person or persons who are the "owners" of a "farm" as these two terms are further defined in subpart A of part 1944 of this chapter.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a "farm".

Handicap. (See subpart C of part 1930 of this chapter.)

Home base. A home base State is a State which the farm laborer claims as his/her domicile.

Household furnishings. Such basic durable items as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers, and beds. Items such as bedding, linens, dishes, silverware, and cooking utensils are not included in this definition.

Housing. New or existing structures which are or will be suitable for decent, safe and sanitary dwelling use by domestic farm labor. "Housing" may include household furnishings and related facilities where appropriate.

Individual. A natural person. It may include the spouse.

LH fund(s). May include either loan or grant monies or both in this subpart.

Local broad-based nonprofit organization. An organization, public or private, that operates in one employment area and which:

(1) Is incorporated with the State, Puerto Rico, or Virgin Islands, or a federally recognized Indian Tribe;

(2) Is organized and operated on a nonprofit basis;

(3) Is legally precluded from distributing any profits or dividends to its members or any private individual during its corporate lifetime;

(4) Is not grower oriented (majority of board must be nonfarmers);

(5) Pledges to administer the housing as a community service in the interest of the whole community, regardless of race, color, national origin, sex, religion, age, handicap, and marital or familial status;

(6) Has at least 25 members for projects with a total development cost of up to $100,000 and additional members for projects costing more than $100,000; and

(7) Has a membership reflecting a variety of interests of the area where the housing will be located.

Members and membership. Includes stockholders and stock when appropriate.

Migrant agricultural laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place he/she calls home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Mortgage. May include any appropriate form of security instrument.

Nonprofit organization of farmworkers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which

has local representation in the membership, and whose membership is composed of at least 51 percent farmworkers.

Organization. A broad-based nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or Political subdivision of State or local government.

Promissory note. May include a bond or other evidence of indebtedness.

Regional or statewide broad-based nonprofit organization. Any organization that operates or plans to operate in more than one employment area, that provides or is planning to provide labor housing to those areas and that meets the following criteria in addition to those in paragraphs (1) through (6) under the definition for "local broad-based nonprofit organization:"

(1) The membership of the organization must be broadly representative of the region or state by having representation from either the counties or employment areas in which it provides or is planning to provide labor housing; and

(2) The membership must include at least eight (8) members from the employment area to be served by the project who represent a variety of interests of the employment area. If the project is located in a community or dependent upon a community for essential services, at least four of the eight members must be residents of that community.

Related facilities. Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

Retired or disabled domestic farm laborer. A "retired domestic farm laborer" is a person who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer (self-certification and employer affidavits may be used as a last resort). A "disabled domestic farm laborer" is a person who is determined to have an impairment which is expected to be of long-continued, indefinite duration, and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician) and who is a domestic farm laborer prior to disability.

Seasonal housing. Described in exhibit I of subpart A of part 1924 of this chapter.

Self-employed. The determination of self-employed farm laborers is in accordance with the Common Law test used by the Internal Revenue Service to determine an employer-employee relationship. The Common Law Rules Factors are included in exhibit L of this subpart and are available for review in any FmHA Office. Exhibit L of this subpart is provided for situations when it is not clear an employer-employee relationship exists for eligible farm labor. The eligibility determination and use of the Common Law Rules Factors may be referred to the District or State Director for resolution.

Subsequent LH loan or grant. A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined of this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) Actual dollars earned from farm labor by domestic farm laborers other than migrant laborers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions, as shown in exhibit J of this subpart (which is available in any FmHA office). For migrant laborers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in Exhibit J of this subpart.

(ii) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of, at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine, substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in the project must not have household income which exceeds the moderate income limit as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA office), for the appropriate household size and appropriate geographical area.

(i) Income for purposes of this section is defined in exhibit B (II)(C) of subpart C of part 1930 of this chapter and also includes the full amount of periodic payments received from Social Security (including Social Security payments received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts, as well as any payments that will begin during the next 12 months, such as payments in lieu of earnings, such as unemployment and disability compensation, worker compensation and severance pay.

(ii) Exempted income is income of dependents, unmarried minors, under 18 years of age except as specified in paragraph (3)(i) of this definition. (Tenants or co-tenants or spouses of either are not considered as minors for purposes of this section.)

Variety of interests. To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

6. Section 1944.154 is redesignated as 1944.155 and a new 1944.154 is added to read as follows:

§ 1944.154 Priorities for tenants' occupancy.

(a) Tenant occupancy in labor housing is prioritized in the following order:

(1) First priority is to be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.

(i) For LH units without Rental Assistance, occupancy priority within each ranking category is according to the household's income, very-low, low-, then moderate.

(ii) For LH units with Rental Assistance, tenant occupancy priority is given to all eligible very-low income farm worker households by ranked category, then to low income farm

worker households by ranked category. Moderate income may be served when there are no very-low or low-income eligible farm workers on the waiting lists, again by ranked category.

(2) Second priority is given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(3) Third priority is to be given to other retired or disabled farm laborer households. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(b) When there is a diminished need for housing by persons or families in the above categories, such units may be made available to persons or families eligible for occupancy under the section 515, Rural Rental Housing program. Section 515 tenants may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (a) of this section. As the basis for FmHA's approval or disapproval of a borrower's determination of diminished need, the borrower must submit to FmHA a current analysis of need and demand, identical to the market survey required of applicants in exhibit A–I of this subpart. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.

(c) For additional guidance on occupancy and rental assistance, refer to FmHA Instruction 1930–C, exhibit B VI of this subpart, Renting Procedures, and exhibit E of this subpart, Rental Assistance Program. The Agency is required by statute to provide affordable housing to eligible farm workers and their families as a first program priority and to provide Rental Assistance as a second program priority. If it appears there is conflict in FmHA Instructions concerning the housing of an eligible Domestic or Migrant Farm Worker, document the problem and consult the District Director. If necessary, the problem may be referred to the State Office and/or the National Office for resolution.

§ 1944.157 [Amended]

7. Section 1944.157 (b)(1) is amended in the first sentence by changing the reference "§ 1944.153(i)" to "§ 1944.153."

Dated: May 1, 1991

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14670 Filed 6–20–91; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 602 and 603

RIN 3052–AA05

Releasing Information; Privacy Act Regulations; Fees Imposed on Information Requests

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final regulations that amend 12 CFR parts 602 and 603, relating to the availability of records of the FCA. The regulations implement statutory changes made by the Freedom of Information Reform Act of 1986, Pub. L. 99–570, by amending the fee structures and related provisions governing fee charges for document requests. The regulations also implement the provisions of Executive order 12600 by providing predisclosure notification procedures for confidential commercial or financial information.

DATES: These regulations shall become effective on the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
Ronald H. Erickson, Freedom of Information Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4113;
or
James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA) is adopting final regulations relating to Freedom of Information Act requests. These final regulations incorporate changes required as a result of the Freedom of Information Reform Act of 1986, Pub. L. 99–570 (1986 Act), implement the provisions of Executive order 12600, and make certain other technical changes.

The 1986 Act amended the Freedom of Information Act (FOIA) (5 U.S.C. 552) by establishing a new fee structure governing the fees that can be imposed for providing information and requiring the Office of Management and Budget (OMB) to promulgate guidelines regarding such fee structure. On March 27, 1987, the OMB published the Uniform Freedom of Information Act Fee Schedule and Guidelines at 52 FR 10012 (OMB Guidelines). On January 5, 1990, the FCA published for comment regulations reflecting changes required as a result of the 1986 Act, Executive order 12600, and the OMB Guidelines (55 FR 440). During the public comment period, comments were received from the Farm Credit Council (Council), the Farm Credit Bank of Baltimore (Baltimore FCB) and the Reporters Committee for Freedom of the Press (Committee).

The final regulations generally enable the FCA to recover the actual costs incurred in releasing information, impose new limitations on the amount of fees that can be imposed on certain persons or entities requesting information, authorize fees for reviewing documents for persons or entities requesting information for commercial purposes, and revise the criteria used in determining whether to waive or reduce fees. In addition, the regulations implement the 1986 Act's amendment of FOIA exemption (b)(7), which relates to records compiled for law enforcement purposes. The final regulations implement Executive order 12600, concerning predisclosure notification procedures for confidential commercial information. The regulations provide that, prior to releasing certain commercial or financial information to a requester, the FCA will, to the extent permitted by law, notify the person which submitted the information, and afford the submitter a reasonable period within which to object to disclosure. Finally, the final regulations make certain technical changes which reflect changes in the internal organization of FCA.

Section 602.262—Release of Business Information

Section 602.262 implements requirements of Executive order 12600, concerning release of business information. Several comments were received concerning this section. The Committee commented that FCA regulations should "emphasize the duty of the agency by law to respond to requesters within 10 working days and to pass business notification procedures that enable the agency to comply with the law." The Committee asked that the words "to the extent permitted by law" be inserted in this section to indicate that such notification should not

contravene the statute's specific time limits for agency responses to FOIA requests.

The agency believes that it is appropriate to include the qualifying words "to the extent permitted by law" in § 602.262, since Executive order 12600 uses those words to qualify the requirements which it imposes concerning opportunities for objections to disclosure of confidential information. Accordingly, § 602.262(c)(1), concerning the notice to the business submitter, and § 602.262(e), concerning affording a reasonable period for the business submitter to object to disclosure, have been revised to include the words "to the extent permitted by law" in order to more closely conform those sections to the wording of the Executive order.

In addition, § 602.262(f)(2) provides that, if the FOIA Officer plans to release business information, the officer must forward to the business submitter a written notice within a reasonable number of days prior to the specified date upon which disclosure is intended, "as circumstances permit." The Council commented that the words "as circumstances permit" should be deleted, in order to more closely conform the requirements of § 602.262(f)(2) to the wording of the Executive order. The agency agrees, and the final § 602.262(f)(2) replaces the words "as circumstances permit," with the words "to the extent permitted by law."

The Council and the Baltimore FCB commented that the protection afforded to business information by the proposed regulations should be broadened. The Baltimore FCB and the Council took exception to § 602.262(d)(1)(i) which provides that for business information submitted prior to January 1, 1988 and which is less than 10 years old, the notice requirement is only applicable if the information is subject to a prior express commitment of confidentiality by the agency. Both commenters indicated that this was a material difference from Executive order 12600, section 3(a)(i), which provides for notification of such business submitters when records are less than 10 years old and "the information has been designated by the submitter as confidential commercial information."

In response to this comment the FCA notes that this was a technical error in the proposed regulations. The regulations should have been consistent with the Executive order and accordingly § 602.262(d)(1)(i) has been revised to reflect this change. When requested records are less than 10 years old and business submitters have designated the information as confidential commercial information, the business submitter will be informed of the request under the procedures prescribed by § 602.262(d)(1). The requirement that business submitters be informed of requests for information which is subject to FCA's express prior commitment of confidentiality, formerly contained in § 602.262(d)(1)(i), has been moved to a new § 602.262(d)(1)(iii).

Section 602.265(e)—Definition of "Representative of the News Media"

Section 602.265(e), as proposed, defined the term "representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." The Committee objected to this definition, claiming that it was contrary to the decision in *National Security Archive* v. *U.S. Department of Defense,* 880 F.2d 1381 (D.C. Cir. 1989), *cert. denied* ____ U.S. ____, 110 S.Ct. 1478, 108 L.Ed. 2d 615 (March 19, 1990). The Committee argues that the definition should include "anyone whose activities are associated with publishing or disseminating information," and urges that the FCA adopt regulations defining "representative of the news media" as "any person or organization which regularly publishes or disseminates news to the public, in print or electronically."

The FCA disagrees with the commenter's interpretation of the National Security Archive case. That case did not invalidate the Department of Defense regulation definition of "representative of the news media," or the OMB Guidelines' definition upon which it was modeled. Neither the Department of Defense nor other agencies have been required to modify their definition of "representative of the news media" by reason of the National Security Archive decision. See 55 FR 17602, April 26, 1990. In National Security Archive the Court stated, "A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." The agency does not believe that the definition of "representative of the news media" contained in § 602.265(e) is inconsistent with the National Security Archive decision.

The regulations define "news" as "information that is about current events or that would be of current interest to the public." The Committee objected that the definition places agency personnel in the position of making editorial judgments. The FCA does not agree with this comment, although agency personnel must determine whether a requester is seeking information as part of news gathering, and is engaging in activities which a representative of the news media engages in, the inclusion of a definition of "news" in the regulations does not require that agency personnel evaluate whether the information sought is, in fact, newsworthy. Accordingly, the agency adopts § 602.265(e) without change.

Section 602.267(e)—Duplication Charges

Section 602.267(e) provides that the agency may charge 15 cents per page for copies of documents furnished to requesters. The Committee objects to the copying charge of 15 cents per page, stating that it amounts to an increase of 50 percent over the 10 cents per page charge in former FCA regulations. In support of its position, the Committee also stated that, if work were contracted out by the agency, the costs would be from 3 cents to 5 cents per page. In response to this comment, the agency believes that the charge of 15 cents reflects an average agencywide per page charge for reproduction of documents at the Farm Credit Administration. This charge represents the reasonable direct costs of making copies, taking into account the salary of the operators as well as the cost of duplicating machines. The agency notes that the former charge of 10 cents per page was adopted in 1975, over 15 years ago. Finally, in response to the suggestion that such work could be contracted out, the agency points out that information requested under the Freedom of Information Act is often copied from the only file copy. In light of the danger of lost documents, and the sensitive nature of financial and other information handled by the agency, which regulates the activities of banks and other lending institutions, the agency does not believe it would be appropriate to make a practice of sending material contained in official agency files to commercial photocopy services for duplication. Accordingly, § 602.267(e) is adopted without change.

Section 603.345—Fees for Privacy Act Requests

A technical amendment is made to § 603.345. Section 603.345 provides that fees for copies of records requested under the Privacy Act of 1974 will be the same as fees for copies of documents requested under the FOIA. Amendments made to part 602 make it necessary to amend § 603.345 by replacing its

reference to former § 602.265 with a reference to new §§ 602.267 and 602.269.

List of Subjects in 12 CFR Parts 602 and 603

Courts, Freedom of information, Government employees, Privacy.

For the reasons stated in the preamble, parts 602 and 603 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 602—RELEASING INFORMATION

1. The authority citation for part 602 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 552, E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235.

Subpart B—Availability of Records of the Farm Credit Administration

2. Section 602.250 is amended by revising paragraph (a)(7) to read as follows:

§ 602.250 Official records of the Farm Credit Administration.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

§ 602.260 [Amended]

3. Section 602.260 is amended by removing the words ", other than records identified in § 602.265(a) of this part which are available in a public reference facility in the offices of the Farm Credit Administration," from the first sentence.

§ 602.261 [Amended]

4. Section 602.261 is amended by removing the words "Office of Administration" and adding in their place, "Office of Resources Management" each place they appear in paragraphs (b), (c) and (d).

5. Section 602.262 is added to read as follows:

§ 602.262 Business information.

(a) Business information provided to the Farm Credit Administration by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit Administration determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Freedom of Information Officer* means the Freedom of Information Officer, Office of Congressional and Public Affairs.

(4) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit Administration has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) For business information submitted to the Farm Credit Administration prior to January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The information is less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Farm Credit Administration has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter; or

(iii) The information is less than 10 years old and is subject to a prior express commitment of confidentiality given by the Farm Credit Administration to the business submitter.

(2) For business information submitted to the Farm Credit Administration on or after January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit Administration has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (d)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(4) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit Administration shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm

Credit Administration with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit Administration shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit Administration decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit Administration shall promptly notify the business submitter of such action.

Subpart D—[Redesignated From Subpart C]

6. Subpart C, consisting of §§ 602.280 through 602.289, is redesignated as new subpart D.

§ 602.265 [Removed]

7. Section 602.265 is removed.

8. A new subpart C, consisting of §§ 602.265 through 602.272, is added to read as follows:

Subpart C—Fees for Provision of Information

Sec.

Subpart C—Fees for Provision of Information

§ 602.265 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) The term *commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit Administration shall determine the purpose for which the documents requested will be used. If the Farm Credit Administration has reasonable cause to doubt the purpose, specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit Administration shall seek additional clarification before assigning the request to a specified category.

(b) The term *direct costs* means those expenditures the Farm Credit Administration actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit Administration actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial, trade or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit Administration may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) The terms *reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) The term *review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term *review* does not include the time spent resolving general legal or policy issues

regarding the application of exemptions. The Farm Credit Administration shall only charge fees for reviewing documents in response to a commercial use request.

(h) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit Administration and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A "search" for material that is responsive to a request should be distinguished from a "review" of material to determine whether the material is exempt from disclosure.

§ 602.266 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit Administration shall charge fees for records requested by or on behalf of educational institutions and non-commercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(b) The Farm Credit Administration shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit Administration shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 602.271, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit Administration shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b) or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 602.271 requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of "8½ ×11" or "11 × 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meet the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit Administration will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit Administration will begin assessing charges for computer search.

§ 602.267 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit Administration for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit Administration analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit Administration will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or

a postal money order. Remittances shall be made payable to the order of the Farm Credit Administration.

(h) A receipt for fees paid will be given upon request.

§ 602.268 Waiver or reduction of fees.

(a) The Farm Credit Administration may grant a waiver or reduction of fees if the Farm Credit Administration determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit Administration will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance, and processing the fee.

§ 602.269 Advance payments—notice.

(a) Where it is anticipated that the fees chargeable will amount to more that $25.00 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed $250.00 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit Administration may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250.00 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit Administration may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit Administration may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit Administration personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 602.270 Interest.

The Farm Credit Administration may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit Administration, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 602.271 Charges for unsuccessful searches or reviews.

The Farm Credit Administration may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 602.266 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit Administration may assess charges for time spent reviewing records for requesters in the category provided for in § 602.266(c) even if the records located are determined to be exempt from disclosure.

§ 602.272 Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit Administration reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit Administration may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

PART 603—PRIVACY ACT REGULATIONS

9. The authority citation for part 603 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

§ 603.345 [Amended]

10. Section 603.345 is amended by removing the reference to "§ 602.265" and adding in its place "§§ 602.267 and 602.269".

Dated: June 13, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-14765 Filed 6-20-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-116-AD; Amendment 39-7040; AD 91-13-09]

Airworthiness Directives; McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-2O, -30, -40, -50, and C-9 (Military) series airplanes, which currently requires repetitive inspections for cracks of the forward slat drive drums bellcrank shafts, and replacement, if necessary. This amendment requires more stringent repetitive inspection intervals and the use of an improved visual inspection procedure. This amendment is prompted by a number of reports of slat drive bellcrank failures resulting in slat malfunction. This condition, if not corrected, could result in slat asymmetry and potential reduction of lift and lateral control of the aircraft at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed.).

DATES: Effective July 8, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the

Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ali Bahrami, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5236.

SUPPLEMENTARY INFORMATION: On November 19, 1984, the FAA issued AD 84–24–03, Amendment 39–4956 (49 FR 48027, December 10, 1984), applicable to certain McDonnell Douglas Model DC–9 series airplanes, to require repetitive inspections for cracks of the forward slat drive drum bellcrank shafts, and replacement, if necessary. That action was prompted by 18 reported instances of slat drum bellcrank failures due to cracking, all of which resulted in slat malfunction. This condition, if not corrected, could result in slat asymmetry and potential reduction of lift and lateral control of the aircraft at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed).

Since issuance of that AD, there have been 4 additional (22 total) instances of slat drive drum bellcrank failures. Investigation of these failures has resulted in a re-evaluation of the previously mandated inspection procedures and intervals. Based on this re-evaluation, the FAA has determined that a new improved inspection procedure and a reduced repetitive inspection interval are necessary in order to detect cracking in a timely manner. The new inspection interval is one-half of that previously mandated.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27–250, Revision 3, dated May 15, 1991, which describes procedures for visual inspection of the slat drive drums bellcrank for cracks.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 84–24–03 to add a more stringent repetitive inspection interval and a new improved inspection procedure, in accordance with the service bulletin previously described.

This rule differs from the existing rule in that all references to the use of "later FAA-approved revisions of the applicable service bulletins," have been removed. This has been done in order to be consistent with FAA policy in that regard. Use of later revisions of the service bulletin may be approved as an alternative means of compliance with this AD, as provided by paragraph (g).

The requirements of this AD are considered interim action. The FAA will consider further rulemaking action to require replacement of the slat drive drum bellcrank as terminating action for the required inspections.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4956 and by adding the following new airworthiness directive:

91–13–09. McDonnell Douglas: Amendment 39–7040. Docket No. 91–NM–116–AD. Supersedes AD 84–24–03.

Applicability: Model DC–9–20, –30, –40, –50, and C–9 (Military) series airplanes, which correspond to factory serial numbers listed in McDonnell Douglas Service Bulletin 27–196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990; Service Bulletin 27–250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and Alert Service Bulletin A27–250, Revision 3, dated May 15, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To detect cracks and prevent failure of the slat drive mechanism and its interrelated structure, accomplish the following:

(a) Within 20 days or 135 landings, whichever occurs first after January 10, 1985 (the effective date of AD 84–24–03, amendment 39–4956), inspect the left and right actuator slat drive mechanism in accordance with McDonnell Douglas Service Bulletin 27–196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990.

(1) If no cracks are found, no further inspection is required.

(2) If a crack is found, and the crack is less than 1 inch in length, continue to inspect the actuator slat drive shaft at intervals not to exceed 1,600 landings in accordance with the service bulletin.

(3) If a crack is found, and the crack is one inch or greater in length, prior to further flight, replace the actuator slat drive shaft in accordance with Condition II specified in the service bulletin. Such replacement constitutes terminating action for the inspections required by paragraph (a)(2) of this AD.

(b) Within 20 days or 135 landings, whichever occurs first after January 10, 1985 (the effective date of AD 84–24–03, amendment 39–4956), inspect the forward slat drive drums' bellcrank shafts that have accumulated 4,000 or more landings since new or last overhaul.

(1) If no cracks are detected, continue to inspect the slat drive drum bellcrank shaft for cracks at intervals not to exceed 1,500 landings as shown in Figure 1 of McDonnell Douglas Service Bulletin 27–250, dated August 29, 1984; Revision 1, dated October 18, 1984; or Revision 2, dated January 3, 1990.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft in accordance with Condition II of the service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(c) Within 500 landings after the effective date of this AD or at the next scheduled inspection in accordance with paragraph (b) of this AD, whichever occurs earlier, inspect the slat drive drums bellcrank shaft for cracks in accordance with McDonnell

Douglas Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991. This inspection constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(1) If no cracks are found, repeat the inspection of the slat drive drum bellcrank shaft for cracks at intervals not to exceed 750 landings, in accordance with the alert service bulletin.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft with a new drum shaft, P/N 5920212-505, in accordance with Condition II specified in the alert service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (c)(1) of this AD.

(d) If cracks are found in locations in the slat drive shaft(s) other than those specified in McDonnell Douglas Service Bulletin 27-196, Revision 1 or 2, and Alert Service Bulletin A27-250, Revision 3, prior to further flight, replace or rework the cracked component(s) in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(e) Replacement of both the actuator slat drive mechanism and the slat drive drum bellcrank shaft in accordance with Condition II of the following service bulletins, as applicable, constitutes terminating action for the requirements of this AD:

McDonnell Douglas service bulletin No.	Revision level	Date
27-196	Revision 1	Sept. 28, 1984.
	Revision 2	Dec. 17, 1990.
27-250	Original	Aug. 29, 1984.
	Revision 1	Oct. 18, 1984.
	Revision 2	Jan. 3, 1984.
A27-250	Revision 3	May 15, 1991.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(h) Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

(i) The inspection and replacement requirements shall be done in accordance with McDonnell Douglas Service Bulletin 27-196, Revision 1 dated September 28, 1984, or Revision 2, dated December 17, 1990; Service Bulletin 27-250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1-L5B (54-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39-4956, AD 84-24-03.

This amendment (39-7040 , AD 91-13-09) becomes effective July 8, 1991.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14774 Filed 6-20-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Cultural and Historic Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed changes revise certain permit application requirements and review procedures relating to cultural and historic resources; modifies certain definitions; and further defines areas where mining is prohibited, limited or unsuitable. The amendment is intended to revise the Maryland program and to be consistent with the corresponding Federal requirements.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982 Federal Register (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of Amendment

By letter dated June 9, 1987, OSM sent to Maryland a list of areas of the State's program OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Number MD-369).

By letter dated March 23, 1990 (Administrative Record No. MD-445), the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) submitted a proposed amendment to modify the following sections of the Maryland program: Code of Maryland (COMAR) 08.13.09.02, 08.13.09.05, 08.13.09.10, and 08.13.09.11.

OSM announced receipt of the proposed amendment in the April 25, 1990 Federal Register (55 FR 17458), and in the same notice opened the public comment period and provided for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 25, 1990.

By letter dated March 26, 1991 (Administrative Record No. MD-517), Maryland submitted additional information to both support and modify its proposed amendment. The additional information was submitted in response to letters dated November 28, 1990, and January 28, 1991 (Administrative Record Nos. MD-486 and MD-508, respectively), from OSM. OSM announced receipt of the revisions of the previously proposed amendment in the April 16, 1991, Federal Register (56 FR 15311) and in the same notice, reopened the public comment

period. The comment period closed on May 1, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 732.17, are the Director's findings concerning the proposed amendment to the Maryland program. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

In its submission of March 23, 1990, Maryland proposed revisions to COMAR 08.13.09.02K(2)(b) and 08.13.09.02L(1)(1) expanding coverage of these rules to cultural and historic resources eligible for listing on the National Register of Historic Places. However, these proposed revisions were previously approved by the Director in the final rule published on May 22, 1991 (56 FR 23505). Therefore, no further action is being taken by the Director on these revisions.

1. COMAR 08.13.09.02K(2)(b)

Maryland is revising paragraph K(2)(b) to provide that an applicant for a permit may be required to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through (i) Collection of additional information; (ii) Conduct of field investigations; or (iii) other appropriate analyses. In addition, Maryland, in response to a letter from OSM dated January 28, 1991 (Administrative Record No. MD–508), has agreed to change the term "archeological features" to archeological sites" (Administrative Record No. MD–517). These proposed changes render the State rule substantively identical to the corresponding Federal rule at 30 CFR 779.12(b) (1) and (2). With the understanding that Maryland will use the phrase "archeological sites" in the final rule as promulgated, the Director finds the revised State rule no less effective than the Federal rule.

2. COMAR 08.13.09.02L(1)(1)

In response to a letter from OSM dated January 28, 1991 (Administrative Record No. MD–508), Maryland submitted a letter dated March 26, 1991 (Administrative Record No. MD–517) in which the State agreed to change the term "mine plan or adjacent areas" to "permit and adjacent areas," in paragraph L(1)(1), to conform to the language of the Federal rule at 30 CFR 779.24(i). With the understanding that Maryland will revise the wording of the rule prior to promulgating amended regulations, the Director finds the proposal to be no less effective than its Federal counterpart.

3. COMAR 08.13.09.020(23)

Maryland is revising this rule to provide that every permit application shall include descriptions of measures to be used to prevent, or where valid existing rights exists or joint agency approval is obtained, to minimize adverse impacts to any publicly owned parks or any historic or archeological properties listed or eligible for listing on the National Register of Historic Places. The description shall include a schedule for completion of these measures prior to initiating any mining operations affecting these properties. While the proposed language is similar to 30 CFR 780.31(b), the Federal rule further specifies that the regulatory authority may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures, which may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

In response to a letter from OSM dated November 26, 1990 (Administrative Record No. MD–486), Maryland agreed (Administrative Record No. MD–517), to add a new rule at COMAR 08.13.09.10C(8) which provides that the Bureau may require the permit applicant to protect historic and archeological properties listed on or eligible for listing on the National Register for Historic Places through appropriate mitigation and treatment measures. Present subsection .10C(8) will be renumbered as.10C(9). In the same letter from Maryland dated March 26, 1991, the State agreed to correct an erroneous reference in section 02O(23) by changing the reference from COMAR 08.13.09.10A(2) to COMAR 08.13.09.10C(7). With the understanding that Maryland will make the reference correction and will add new COMAR 08.13.09.10C(8) prior to promulgating amended regulations, the Director finds that the proposed rules at section 02O(23) and section 10C(8) when read together are no less effective than the Federal counterpart at 30 CFR 780.31 (a) and (b).

4. COMAR 08.13.09.05A(6)

In its submission dated March 23, 1990, Maryland proposed to revise COMAR 08.13.09.05A(5). However, section 05A(5) was previously revised and approved in a final rule published on May 22, 1991 (56 FR 23505). In a letter dated May 31, 1991 (Administrative Record No. MD–533), the State acknowledged that the proposed revision was erroneously referenced and, in the final promulgation, the rule will be identified as COMAR 08.13.09.05A(6) with the existing subsections A (6) through (11) being renumbered as A (7) through (12).

The rule provides that in approving a permit, the Bureau must find in writing that it has taken into account the effect of the proposed operation on properties listed or eligible for listing on the National Register of Historic Places and has found that all necessary protection measures have been included in the approved application or permit conditions. While the language of the proposed rule is similar to the language of the Federal rule at 30 CFR 773.13(c)(11), the Federal rule further provides for a documented decision in those cases where the regulatory authority determines that no additional protection measures are necessary. In response to a letter dated November 28, 1990, from OSM (Administrative Record No. MD–486), the State agreed (Administrative Record No. MD–517) to further revise the proposed rule by adding the phrase "or that no additional protection measures are necessary." With the understanding that Maryland will add this phrase prior to promulgating amended regulations, and will change rule identification to section .05A(6), the Director finds that the proposed rule is no less effective than its Federal counterpart at 30 CFR 773.15(c)(11).

5. COMAR 08.13.09.10B(2)

Maryland is revising this rule in order to make the language consistent with the wording of the Federal rule at 30 CFR 761.11(c). The changes include adding the phrase "where mining" in identifying the lands covered by the rule, and eliminating the phrase "publicly owned" in identifying places listed on the National Register of Historic Places. As revised, the language of the proposed rule is substantively identical to the Federal rule at 30 CFR 761.11(c). Therefore, the Director finds the proposed rule to be no less effective than its Federal counterpart.

6. COMAR 08.13.09.10B(7)

Maryland is revising this rule by adding a provision whereby cemeteries may be relocated if authorized by applicable State law or regulation. The revised wording of this rule is identical to the Federal rule at 30 CFR 761.11(g). Therefore, the Director finds the proposed rule to be no less effective than its Federal counterpart.

7. COMAR 08.13.09.10C(7)

Maryland is revising this rule in order to make the language consistent with its Federal counterpart. The changes include replacing the phrase "public park" with the phrase "publicly owned park," and eliminating the phrase "publicly owned" in identifying places listed on the National Register of Historic Places. As revised, the language of the proposed rule is substantively identical to the Federal rule at 30 CFR 761.12(f)(1). Therefore, the Director finds the proposed rule to be no less effective than its Federal counterpart.

8. COMAR 08.13.09.11A (1) and (2)

Maryland is revising the definitions of "Fragile lands" in subsection A(1) and "Historic lands" in subsection A(2) in order to make them identical to the Federal definitions in 30 CFR 762.5. Since the revised definitions are identical to the Federal definitions, the Director finds the proposals no less effective than the Federal counterparts.

IV. Summary and Disposition of Comments

Public Comments. The public comment period and opportunity to request a public hearing announced in the April 25, 1990, **Federal Register** (55 FR 17458) ended May 25, 1990. An extended comment period announced in the April 16, 1991, **Federal Register** (56 FR 15311) ended May 1, 1991. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments. Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Soil Conservation Service, Mine Safety and Health Administration, and the Army Corps of Engineers all generally supported the amendment and subsequent revisions, or had no substantive comments.

Advisory Council on Historic Preservation (ACHP) Comments

The ACHP filed comments regarding several areas of the State's proposed rules. The ACHP expressed concern with the use of the discretionary word "may" in the phrase "the Bureau may require the applicant to identify and evaluate important historic and archeological resources * * *" at COMAR 08.13.09.02K(2)(b). The wording as proposed by the State, is identical to the wording in the Federal rule at 30 CFR 779.12(b)(2). As stated in the preamble to the Federal rule published on February 10, 1987, (52 FR 4244–4263), "OSMRE proposed to add a new paragraph (2) to clarify that the regulatory authority can, where appropriate, require applicants to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places." Further, the preamble provided that "Clearly, paragraph (b)(2) allows the regulatory authority to require identification and necessary treatment or mitigation of currently unknown resources, when the regulatory authority determines that such activities are appropriate." As proposed, the State's rule meets the intent and is no less effective than the Federal rule. Therefore, the Director is not recommending any changes to the State's proposal.

The ACHP expressed similar concerns regarding proposed revisions to COMAR 08.13.09.020(23) and 08.13.09.05A(5). As stated by the ACHP, "* * * the Bureau again will be making decisions about the appropriateness of mitigation measures, and (presumably) will require their implementation, but with no reference to a process about how the decisions will be reached or by whom." The ACHP suggested their implementing regulations, which set forth such a process, should be referenced in the State's proposal, with the State Historic Preservation Officer (SHPO) referenced as the initial point of contact. The State's proposed rules are substantively identical to the Federal counterparts at 30 CFR 780.31 and 30 CFR 773.15(c)(11). As pointed at by OSM in response to comments regarding the new 30 CFR 773.15(c)(11), the National Historic Preservation Act and implementing regulations do not apply directly to permits to conduct surface coal mining operations issued by State regulatory authorities (52 FR 4257). In addition, the Director feels that the State program provides adequate opportunity for the SHPO to participate in the permitting process in a significant manner through notice and opportunity to comment. The Director does not feel that any changes to the State's proposal are required.

The ACHP suggests that the proposed revision to the definition of "Historic lands" at COMAR 08.13.09.11A(2) be modified to recognize other provisions such as the National Historic Preservation Act and the American Indian Religious Freedom Act (Pub. L. 95–341). The definition as proposed by the State is identical to the Federal definition at 30 CFR 767.5. The Director feels the State rule is no less effective than the Federal rule and, therefore, no changes to the State's proposal are necessary.

Finally, the ACHP expressed their belief that all exclusions based on valid existing rights should be deleted. In particular, the ACHP cited COMAR 08.13.09.10B, which identifies areas where mining is prohibited or limited subject to valid existing rights. The rule cited by the ACHP, which is not being revised in the program amendment being discussed, is identical to the Federal rule at 30 CFR 761.11 which implements section 522(e) of SMCRA. Since the State rule is identical to the Federal rule, the Director is not requiring that any changes be made.

The State Historical Preservation Officer for the State of Maryland reviewed the proposed program amendment and indicated his general agreement with the proposal.

V. Director's Decision

Based on the above findings, the Director is approving the proposed program amendment submitted by Maryland on March 23, 1990, and modified on March 26, 1991. The Federal rules at 30 CFR part 920 concerning the Maryland program are being amended to implement the Director's decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA [30 U.S.C. 1292(d)], no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements, rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 13, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 920.15, a new paragraph (l) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(l) The following amendments submitted to OSM on March 23, 1990 and modified and resubmitted on March 26, 1991, are approved as set forth in paragraph (l)(1) of this section effective June 21, 1991.

(1) Revisions of the following rules of Code of Maryland Administrative Regulations:

08.13.09.02 Permit Applications: General Requirements.

08.13.09.05 Permit Applications: Bureau Decision.

08.13.09.10 Areas Where Mining is Prohibited or Limited.

08.13.09.11 Designation of Areas as Unsuitable for Mining.

[FR Doc. 91–14855 Filed 6–20–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with an additional requirement, a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the hydrologic balance as it relates to water quality standards and effluent limitations, and postmining land use. The amendment revises the New Mexico program to provide additional safeguards and improve operational efficiency.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 776–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated April 24, 1990 (Administrative Record No. NM–580), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment on its own initiative.

The rules that New Mexico proposed to revise pertained to the definition of "coal" at Coal Surface Mining Commission (CSMC) Rule 80–1–1–5, hydrologic balance as it relates to water quality standards and effluent limitations at CSMC Rules 80–1–20–42 (a)(8) and (a)(9), and postmining land use at CSMC Rule 80–1–20–133(c).

OSM published a notice in the May 11, 1990, **Federal Register** (55 FR 19752) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM–585). The public comment period closed June 11, 1990.

During its review of the amendment, OSM identified concerns relating to the definition of "coal" at CSMC Rule 80–1–1–5 and postmining land use at CSMC Rule 80–1–20–133(c). OSM notified New Mexico of the concerns by letter dated July 16, 1990 (Administrative Record No. NM–597). By letter dated October 18, 1990 (Administrative Record No. NM–616), New Mexico (1) withdrew from the amendment the proposed revisions to the definition of "coal" at CSMC Rule 80–1–1–5 and (2) corrected a cross reference to another State rule at CSMC Rule 80–1–20–133(c).

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendment as submitted by New Mexico on April 24, 1990, and revised on October 18, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. CSMC Rules 80–1–20–42 (a)(8) and (a)(9), Water Quality Standards and Effluent Limitations

New Mexico proposed to revise CSMC Rule 80–1–20–42 by deleting the existing paragraphs (a)(8) and (a)(9), which set effluent requirements for discharges from areas disturbed by "surface coal mining operations." New Mexico at CSMC Rule 80–1–1–5 defines "surface coal mining operations" as activities conducted in connection with both surface and underground coal mines. In place of the deleted paragraphs, New Mexico proposed a new paragraph (a)(8), which would

require that discharges from areas disturbed by "surface mining activities" comply with applicable State and Federal water quality laws and regulations, including the effluent limitations set forth at 40 CFR part 434. New Mexico at CSMC Rule 80–1–1–5 defines "suface mining activities" as those activities incidental to the surface mining of coal. The effect of New Mexico's proposed revisions is that, whereas deleted paragraphs (a)(8) and (a)(9) required both surface and underground mining operations to comply with the State and Federal water quality laws and regulations, new paragraph (a)(8) would only require surface mining activities to comply with such regulations.

The Federal regulations at 30 CFR 816.42 and 817.42 respectively require surface and underground mining operations to comply with the same standards as proposed in New Mexico's rules.

The Director finds that New Mexico's newly-proposed rule at CSMC Rule 80–1–20–42(a)(8) is no less effective than the Federal regulation at 30 CFR 816.42 but is less effective than the Federal regulation at 30 CFR 817.42. The Director is approving newly-proposed CSMC Rule 80–1–20–42(a)(8) but is requiring New Mexico to revise its program to also require discharges from areas disturbed by underground mining activities to comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR Part 434.

2. CSMC Rule 80–1–20–133(c), Postmining Land Use

CSMC Rule 80–1–20–133(c) sets forth requirements for approval of alternative postmining land uses pertaining to both surface mining activities and underground mining activities and includes the criteria that must be met before the Director of the New Mexico Mining and Minerals Division (MMD) would approve an alternative postmining land use change requested by a permittee. New Mexico proposed at CSMC Rule 80–1–20–133(c) to replace the reference to "section 17–12(c)" with "Section 14–40" because section 17 no longer exists in the New Mexico program. Section 14–40 pertains to the requirements for releasing performance bonds on reclaimed mine lands. The corresponding Federal regulations at 30 CFR 816.133(c) and 817.133(c) do not reference the Federal regulations pertaining to the requirements for releasing performance bonds on reclaimed mine lands, nor any other Federal regulations. The Director finds that the correction of this reference is a nonsubstantive revision.

New Mexico also proposed to delete the phrase "before surface coal mining operations begin" from CSMC Rules 80–1–20–133(c) (1), (3), and (8). This proposed revision would allow the Director of MMD to approve alternative postmining land use changes requested by the permittee after MMD has issued the original mining permit, rather than requiring such approvals to be requested only through the original permit application and before surface or underground mining activities have begun. New Mexico also proposed that the various plans, letters, and approvals required by these rules for the approval of an alternative postmining land use be submitted no less than 60 days prior to the proposed date that the postmining land use change would take effect.

The corresponding Federal regulations at 30 CFR 816.133(c) and 817.133(c), as interpreted by the regulations at 30 CFR 784.200(a) and 817.200(a), allow for the approval of requests for alternative postmining land use changes through the permit revision procedures of 30 CFR 774.13 rather than limiting such approvals to the original permit application process. These regulations do not specify any time period during which information required for approval of alternative postmining land use changes must be submitted.

The Director understands that New Mexico, consistent with the Federal interpretive regulations at 30 CFR 784.200(a) and 817.200(a), would process requests for alternative postmining land uses as permit revisions in accordance with its permit revision requirements at CSMC Rule 80–1–13–12. This New Mexico rule corresponds to the Federal regulations at 30 CFR 774.13. For this issue, the Director finds that New Mexico's proposed postmining land use requirements at CSMC Rules 80–1–20–133(c) (1), (3), and (8), in conjunction with the existing permit revision requirements at CSMC Rule 80–1–13–12, are not inconsistent with the Federal regulations at 30 CFR 816.133(c) and 817.133(c), as interpreted at 30 CFR 784.200(a) and 817.200(a).

The Director also finds that the 60-day time period proposed at CSMC Rules 80–1–20–133(c) (1), (3), and (8) is not inconsistent with the Federal regulations at 30 CFR 816.133(c) and 817.133(c) and the Federal interpretive regulations at 30 CFR 784.200(a) and 817.200(a). In making this finding, the Director notes that any new requirements that would be imposed by proposed CSMC Rule 80–1–20–133(c), such as the 60-day time period, are in addition to and do not replace the existing New Mexico requirements at CSMC 80–1–13–12 for processing permit revisions.

For the reasons discussed above, the Director finds that New Mexico's proposed rules at CSMC Rules 80–1–20–133(c) (1), (3), and (8) are no less effective than the corresponding Federal regulations at 30 CFR 816.133(c), 817.133(c), 784.200(a), and 817.200(a). The Director is approving the proposed rules.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the New Mexico program.

The Bureau of Land Management responded that it had no questions or recommended revisions to the proposed amendment (Administrative Record No. NM–591). EPA, Region 6, responded that it had no objections to the proposed amendment (Administrative Record No. NM–586). The U.S. Fish and Wildlife Service responded that it concurred with the proposed changes to New Mexico's rules (Administrative Record No. NM–593). The Mine Safety and Health Administration (MSHA) responded that New Mexico's proposed rules are acceptable and do not appear to conflict with current MSHA regulations (Administrative Record No. NM–592).

EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with the respect to provisions of the State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated June 22, 1990, EPA gave such written concurrence (Administrative Record No. NM–595).

V. Director's Decision

Based on the above findings, the Director is approving the proposed

amendment as submitted by New Mexico on April 24, 1990, and as revised by it on October 18, 1990. In addition, as discussed in finding No. 1, the Director is requiring New Mexico to amend its program to require that discharges from areas disturbed by underground mining activities comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR part 434. The Director's approval of the proposed amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted to and approved by OSM.

To implement this decision, the Director is amending the Federal regulations at 30 CFR Part 931 that codify all decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 14, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding a new paragraph (n) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(n) The following amendment, as submitted on April 24, 1990 and as revised on October 18, 1990, is approved effective June 21, 1991: Revisions to the New Mexico Coal Surface Mining Commission (CSMC) rules pertaining to water quality standards and effluent limitations at CSMC Rule 80–1–20–42(a)(8); and postmining land use at CSMC Rule 80–1–20–133(c).

3. Section 931.16 is amended by adding paragraph (b) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(b) By August 20, 1991, New Mexico shall submit for OSM approval a program amendment to require discharges from areas disturbed by underground mining activities to comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR part 434.

[FR Doc. 91–14856 Filed 6–20–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Annual Fiscal Year Deductible for Outpatient Services or Supplies

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment incorporates the applicable provisions of recent statutes relevant to the deductible amounts for outpatient care. Public laws 101–510 and 101–511 provide that effective April 1, 1991, the deductible amounts for medical care or services will increase from fifty dollars ($50.00) to one hundred and fifty dollars ($150.00) for an individual and from one hundred dollars ($100.00) to three hundred dollars ($300.00) for a family to include all CHAMPUS beneficiaries except dependents of active duty sponsors in pay grades E–4 or below. However, the Persian Gulf Conflict Supplemental Authorization and Personnel Benefit Act of 1991, Public Law 102–25, stipulates that, in the case of dependents of a member of the Uniformed Services who served or serves on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm, the provisions of Public Laws 101–510 and 101–511, shall not become effective until October 1, 1991. This latter category is defined in the rule as those dependents whose sponsors, are, or were, entitled to Special pay for Hostile Fire/Imminent Danger authorized by section 310 of title 37, United States Code, for service in the Persian Gulf Area.

DATES: *Effective Date:* April 1, 1991. Comments may be received by August 20, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: A. Chris Armijo, Office of Program Development, OCHAMPUS Telephone (303) 361–3630.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. 32 CFR part 199 (DoD 6010.8–R) was revised and published in the **Federal Register** on July 1, 1986 (51 FR 24008).

Since the purpose of this amendment is to implement legislative requirements, we are proceeding to the final rulemaking stage. For fiscal year 1991, the increased deductible has no impact if the beneficiary does not receive additional outpatient services on or after April 1, 1991. However, except for dependents of sponsors who served or are serving in the Persian Gulf in

connection with Operation Desert Storm, whose increased deductibles will not be effective until October 1, 1991, additional outpatient services received on or after April 1, 1991, will be subject to the increases. Any deductible paid in the same fiscal year prior to April 1, 1991, will be credited toward the deductible for services received after April 1, 1991 . Comments from the general public or from other governmental agencies are welcome and any comments received within 60 days of publication of the final rule and requiring a response will be addressed in a later publication of the **Federal Register.**

This rule was written to implement the law as described above, and we certify that it will not have a significant impact on a substantial number of small business entities under the critieria of the Regulatory Flexibility Act.

In compliance with Executive Order 12291, we certify that this is not a major rule and will, therefore, not have a signficant impact on the economy.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (f)(2)(i), (f)(3)(i), and (f)(4)(i) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) * * *

(2) * * *

(i) *Annual fiscal year deductible for outpatient services and supplies.*

(A) For .are rendered all eligible beneficiaries prior to April 1, 1991, or when the active duty sponsor's pay grade is E–4 or below, regardless of the date of care:

(1) *Individual Deductible.* Each beneficiary is liable for the first fifty dollars ($50.00) of the CHAMPUS-determined allowable amount on claims for care provided in the same fiscal year.

(2) *Family Deductible:* The total deductible amount for all members of a family with the same sponsor during one fiscal year shall not exceed one hundred dollars ($100.00).

(B) For care rendered on or after April 1, 1991, for all CHAMPUS beneficiaries except dependents of active duty sponsors in pay grades E–4 or below.

(1) *Individual Deductible:* Each beneficiary is liable for the first one hundred and fifty dollars ($150.00) of the CHAMPUS-determined allowable amount on claims for care provided in the same fiscal year.

(2) *Family Deductible:* The total deductible amount for all members of a family with the same sponsor during one fiscal year shall not exceed three hundred dollars ($300.00).

(*C*) CHAMPUS-*approved Ambulatory Surgical Centers or Birthing Centers.* No deductible shall be applied to allowable amounts for services or items rendered to active duty for authorized NATO dependents.

(D) *Allowable Amount does not exceed Deductible Amount.* If fiscal year allowable amounts for two or more beneficiary members of a family total less than $100.00 ($300.00 if paragraph (f)(2)(i)(B)(*2*) of this section applies), but more of the beneficiary members submit a claim for over $50.00 ($150.00 if paragraph (f)(2)(i)(B)(*1*) of this section applies), neither the family nor the individual deductible will have been met and no CHAMPUS benefits are payable.

(E) For any family the outpatient deductible amounts will be applied sequentially as the CHAMPUS claims are processed.

(F) If the fiscal year outpatient deductible under either paragraphs (f)(2)(i)(A) or (f)(2)(i)(B) of this section has been met by a beneficiary or a family through the submission of a claim or claims to a CHAMPUS fiscal intermediary in another geographic location from the location where a current claim is being submitted, the beneficiary or sponsor must obtain a deductible certificate from the CHAMPUS fiscal intermediary where the applicable beneficiary or famiy fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second beneficiary or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in paragraph (f)(2)(i)(F) of this section, is supplied to the CHAMPUS fiscal intermediary applying the second deductible.

(G) Notwithstanding the dates specified in paragraphs (f)(2)(i)(A) and (B) of this section, in the case of dependents of active duty members of rank E–5 or above with Persian Gulf conflict service, the deductible shall be the amount specified in paragraph (f)(2)(i)(A) of this section for care rendered prior to October 1, 1991, and the amount specified in paragraph (f)(2)(i)(B) of this section for care rendered after October 1, 1991. For purposes of the preceding sentence, a member with Persian Gulf conflict service is a member who is, or was, entitled to special pay for hostile fire/imminent danger authorized by 37 U.S.C 310, for services in the Persian Gulf area in connection with Operation Desert Shield or Operation Desert Storm.

* * * * *

(3) * * *

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E–5 or above as specified in paragraph (f)(2)(i)(A) or (B) of this section.

* * * * *

(4) * * *

(i) *Annual fiscal year deductible for outpatient services or supplies.* An eligible former spouse is responsible for the payment of the first $150.00 of the CHAMPUS-determined reasonable costs or charges for otherwise covered outpatient services or supplies provided in any one fiscal year. (Except for services received prior to April 1, 1991, the deductible amount is $50.00). The former spouse cannot contribute to, nor benefit from, any family deductible of the member or former member to whom the former spouse was married or of any CHAMPUS-eligible children.

* * * * *

3. Section 199.7 is proposed to be amended by revising paragraph (a)(6) as follows:

§ 199.7 Claims submission, review, and payment.

(a) *General* * * *

(6) *Deductible certificate.* If the fiscal year outpatient deductible, as defined in § 199.4(f)(2) has been met by a beneficiary or a family through the submission of a claim or claims to a

CHAMPUS fiscal intermediary in a geographic location different from the location where a current claim is being submitted, the beneficiary or sponsor must obtain a deductible certificate from the CHAMPUS fiscal intermediary where the applicable individual or family fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second individual or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in this paragraph is supplied to the CHAMPUS fiscal intermediary applying the second deductible (refer to § 199.4 (f)(2)(i)(F)).

* * * * *

Dated: June 17, 1991.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14802 Filed 6-20-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[CGD 191-049]

Safety Zone Regulation: New York, New Jersey and the Lower Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New York, New Jersey and the Lower Hudson River. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This regulation becomes effective at 10 p.m. local time 30 June 1991. It terminates at 11:15 p.m. local time 30 June 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information: The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation: The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 10 p.m., 30 June 1991 to 11:15 p.m. 30 June 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. A new § 165.T1049 is added to read as follows:

§ 165.T1049 Safety Zone: New York, New Jersey and the Lower Hudson River.

(a) *Location.* The following area has been declared Safety Zones: All waters of the Lower Hudson River within a 300 yard radius of the fireworks barge located 350 yards west of Pier 45 Manhattan.

(b) *Effective date.* This regulation becomes effective at 10 p.m. local time 30 June 1991. It terminates at 11:15 p.m. local time 30 June 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 13, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-14797 Filed 6-20-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991-AA40

Civil Money Penalties for Failure To Report Medical Malpractice Payments and for Breaching the Confidentiality of Information

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes civil money penalties (CMPs) pursuant to title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986 (HCQIA), as amended by section 402(a) of Public Law 100-177. Section 421(c) of HCQIA establishes a CMP against any entity that fails to report information that is required to be reported on medical malpractice payments. Section 427(b) of HCQIA establishes a CMP against any person that breaches the confidentiality of information which is reported or furnished pursuant to HCQIA and which the Secretary has established the National Practitioner Data Bank to collect and disseminate.

EFFECTIVE DATE: These regulations are effective on June 21, 1991. See section IV of Supplementary Information in this preamble for further information.

FOR FURTHER INFORMATION CONTACT: Zeno W. St. Cyr, II, Legislation and Regulations Staff, (202) 619-3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. Health Care Quality Improvement Act

The Health Care Quality Improvement Act (HCQIA), title IV of Public Law 99-660 as amended by section 402(a) of Public Law 100-177, sets forth specific requirements governing the reporting and disclosure of information concerning: (1) Payments made for the benefit of physicians, dentists and other health care practitioners as a result of medical malpractice actions or claims, and (2) certain adverse actions taken regarding the licenses or clinical privileges of physicians, dentists, and, in some cases, other health care practitioners. The stated purpose of these provisions is to improve the quality of medical care by identifying those physicians, dentists, or other health care practitioners who are engaged in unprofessional behavior, and

to restrict their ability to move from one State to another without disclosure or discovery of their damaging or incompetent performance.

HCQIA requires the Secretary to establish, either directly or through an appropriate public or private agency designated by the Secretary, a National Practitioner Data Bank (the Data Bank) to serve as a national source of information on physicians, dentists and, under certain circumstances, other health care practitioners concerning: (1) Payments made as a result of medical malpractice actions or claims; (2) adverse licensure actions taken by Boards of Medical Examiners and equivalent State licensing boards for other health care practitioners; and (3) adverse actions on clinical privileges taken by health care entities.

HCQIA also provides that information reported or furnished pursuant to part B is confidential and is to be disclosed only for purposes specified in the law. This information is intended to be used solely with respect to activities in furtherance of the quality of health care. The specific procedures and requirements for reporting and dissemination of this information by the Data Bank are contained in final regulations published in the October 17, 1989, issue of the Federal Register (54 FR 42722).

B. Civil Money Penalty Authority

In recent years, Congress has provided the Department of Health and Human Services with increasing civil money penalty (CMP) authorities to ensure compliance with statutory provisions. The original CMP authorities were specifically designed to provide penalties for fraudulent and abusive practices, such as the submission of false claims, involving the Medicare and Medicaid programs. The authority for levying CMPs was further expanded in recent years to address issues involving the quality of care, other reimbursement issues, and other State health care programs. With enactment of the Health Care Quality Improvement Act, Congress has broadened the Department's existing CMP authorities by specifically providing new CMPs to enforce the requirements of HCQIA relative to reporting medical malpractice payment information and maintaining the confidentiality of information reported or disclosed under HCQIA. Authority for imposing the new CMPs has been delegated to the Inspector General

II. Summary of the Provisions of the Proposed Rule

A notice of proposed rulemaking (NPRM) addressing the Office of Inspector General's (OIG) civil money penalty authorities under title IV of Public Law 99-660 was published in the Federal Register on March 21, 1988 (53 FR 9260). The provisions of that proposed notice set forth two new CMPs for inclusion in regulations and included a discussion of criteria to be considered in determining penalty amounts.

A. CMP for Failure To Report Medical Malpractice Payments

The proposed rules provided that, under the provisions of section 421(c) of HCQIA, a CMP could be imposed against any person or entity, including an insurance company, that fails to report certain information that is required to be reported on medical malpractice payments. The required information must be reported to the Data Bank as well as to the appropriate licensing board(s) in the State in which the medical malpractice action or claim arose. To assure the timely and complete reporting of medical malpractice payments, the OIG has been delegated the specific responsibility to levy a CMP of up to $10,000 for each payment involved, against any person or entity that fails to report information as required under HCQIA and the regulations set forth in 45 CFR part 60, subpart B.

B. CMP For Breaching The Confidentiality of Information

The proposed rules provided that, under the provisions of section 427(b)(2) of HCQIA, a CMP of up to $10,000 could be imposed against any person or entity who violates the confidentiality of information reported pursuant to HCQIA. The NPRM indicated that the CMP could be imposed against State licensing board employees; employees of health care entities, including health maintenance organizations; employees of the Secretary or a private or public agency; or could be imposed directly against those persons, entities, or organizations that violate the confidentiality requirements of the law. In any case in which it is determined that more than one party was responsible for improperly disclosing confidential information, a penalty, up to the maximum limit, could be imposed against each responsible individual, entity or organization.

C. Determining the Amount of Penalty

In determining the penalty amount for each violation, the proposed regulations set forth five criteria for consideration: (1) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information; (2) the degree of culpability of the person or entity in failing to provide timely and complete payment data or in breaching the confidentiality of reported information; (3) the materiality or significance of omission of the information to be reported with regard to medical malpractice payment judgments or settlements, or the materiality of the improper disclosure of information; (4) any prior history of the individual or entity with respect to these violations; and (5) such other matters required by justice.

The NPRM noted that violations of HCQIA would be subject to the same notification, effectuation, and appeal procedures as CMP violations under section 1128A(a) of the Social Security Act which are set forth at 42 CFR part 1003.

III. Summary of and Response to Comments

In response to our NPRM, we received a total of 43 timely-filed public comments. Comments were received from a broad spectrum of interested parties—including several professional, medical and State hospital associations and various State medical, dental, professional regulatory and licensing boards—who voiced specific concerns over both the OIG proposed regulations and the proposed rulemaking by the Public Health Service. Only 24 of these comments were specifically related to the OIG's authorities for levying CMPs for HCQIA violations. The remainder of the comments were forwarded to PHS and were addressed in the Preamble to the final PHS Data Bank regulations that were published in October 1989.

A. Section 1003.101—Definitions

Comment: Several commenters requested that we clarify the definition set forth in § 1003.101 regarding the term "medical malpractice action or claim." Commenters questioned whether this term was limited to claims or actions filed in court or whether it also included administrative claims. In addition, commenters questioned the use of the term "other adjudicative bodies" as used in the definition with regard to where a medical malpractice action or claim may be filed.

Response: This issue was fully addressed in the Preamble to the final PHS regulations. We have incorporated the changes made in the final PHS regulations. As revised, "medical

malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's, or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort brought in any State or Federal court or other adjudicative body. This definition specifically includes the filing of medical malpractice claims on an administrative level, as well as judicial claims and actions. In addition, as used in this definition, "other adjudicative body" is intended to specify medical malpractice actions which are brought before boards and other dispute resolution mechanisms prior to or instead of a formal court action.

B. Section 1003.102—Basis for CMPs and Assessments

Comment: One commenter expressed uncertainty over which person or entity has the responsibility of reporting the payment information.

Response: Under the provisions of HCQIA and the implementing regulations, any person or entity (such as an insurance company, a self-insured hospital, a self-insured physician or dentist, etc.) that makes a payment on behalf of any licensed health care practitioner as the result of a claim or judgment for medical malpractice must report certain information regarding the payment to the Data Bank and the appropriate State licensing board(s). The specific responsibilities of a person or entity, relative to reporting medical malpractice payment information, are set forth in § 60.7 of the final PHS regulations on the Data Bank, 54 FR 42731. Thus, it is the person or entity that actually makes the payment that is required to report the required information.

Comment: The proposed regulations at § 1003.102(c) stated that a penalty may be imposed against any person or entity that "improperly discloses" information in violation of section 427 of HCQIA. One commenter recommended that the term be described in greater detail to indicate what constitutes an improper disclosure. Another commenter suggested that proposed § 1003.102(c) should, in addition to stating that a penalty will be assessed against a person who improperly "discloses" information, include the word "uses" to incorporate the concept included in section 427(b)(3) of the statute.

Response: The provisions authorizing CMPs do not specifically cover section 427(b)(3) of HCQIA. However, we concur with the addition of the word "use" and have revised the regulations to be more specific as to what constitutes an "improper disclosure." We have elected to specify that permitting unauthorized access to or use of reported information constitutes a breach of the confidentiality of such information and hence, a violation of section 427(b). Section 427(b)(1) provides that all information reported pursuant to Part B of HCQIA is considered confidential. That section also specifies the conditions under which such information may be shared. The statute explicitly limits access to the information to certain persons or entities. It also specifies the purposes for which the information may be used when it is provided to those persons or entities. Section 427(b)(2) authorizes a CMP against any person who violates the provisions of section 427(b)(1). Thus, we believe that the statute authorizes the imposition of a CMP against anyone who discloses reported information: (1) To a person who is not entitled to receive it; or (2) for a purpose or activity not authorized by the statute or regulations. Since the statute specifically prohibits the improper disclosure of reported information, we believe that unauthorized access to the information is also covered since such access results in an unauthorized or improper disclosure of information. As revised, the regulations provide for a CMP against any person who improperly discloses reported information, who improperly uses reported information, or who permits unauthorized access to reported information. Section 1003.102(c)(2) has also been revised to clarify that the release of information reported to the Data Bank in response to a subpoena or discovery request is a violation of the confidentiality provisions of section 427. The Department has further clarified that the confidentiality provisions do not, however, apply to an entity's original documents or underlying records from which the information that was reported pursuant to Part B was obtained, compiled, or derived. For example, if a hospital takes an adverse action against a physician, reports it pursuant to the provisions of Part B of Title IV, and later receives a subpoena for its underlying records, the hospital may not refuse to provide the requested documents on the grounds that section 427 bars the release of the records. On the other hand, if the hospital receives a subpoena for a report it furnishes to the Data Bank or a subpoena for a report it receives from the Data Bank, the hospital may not release the report it furnishes to or receives from the Data Bank in response to the subpoena as this would constitute an improper disclosure in violation of section 427 of Public Law 99–660.

Comment: One commenter requested clarification of whether disclosure of information to members and employees of a "professional review body" is authorized.

Response: Section 60.13 of the PHS final rule (54 FR 42734) contains provisions relative to the confidentiality of Data Bank information and sets forth certain conditions under which Data Bank information may be disclosed. Specifically this section provides that while the confidentiality restrictions apply to parties who receive information directly from the Data Bank or indirectly from the requesting party, information received from the Data Bank is permitted and authorized to be disclosed to members and employees of a professional review body in the course of performing the activity for which it was sought. The OIG regulations conform to the final PHS rules, indicating who may request information, what information may be made available, and limitations on disclosure.

Comment: Several commenters also suggested amending § 1003.102(c) to clarify that employees, consultants and others associated with the Data Bank are subject to penalties if they use or disclose the information in a manner inconsistent with their work on the Data Bank.

Response: The statute and the implementing regulations addressing this area specifically provide that any "person" who improperly discloses or uses information is subject to a CMP. The CMP regulations at 1003.101 broadly define the term "person" to include individuals as well as public or private entities. We have revised the final rules to provide that a CMP can be imposed against any person who improperly discloses, uses, or permits access to the confidential information collected or reported, either directly or indirectly, by the Data Bank. Therefore, we do not believe it is necessary to single out employees, consultants, or others associated with the Data Bank.

Comment: One commenter indicated that the reference in § 1003.102(c) regarding improper disclosure as a violation of "section 60.11 of this title" is incorrect.

Response: The correct reference in this subsection should be to 45 CFR, part 60. We have amended this reference accordingly.

C. Section 1003.103—Amount of Penalty

Comment: One commenter predicted that some insurers initially may experience difficulties complying with

the new reporting requirements and believed that no CMPs should be assessed against insurers for omissions or errors in reporting for six months after the regulations are effected. This commenter also believed the regulations should state that the maximum $10,000 CMP will be applied only rarely and only in cases of egregious and flagrant disregard. Another commenter, however, indicated that a CMP of up to $10,000 does not set forth a sufficient and adequate deterrent to individuals for an improper disclosure of information reported or collected by the Data Bank.

Response: The $10,000 maximum penalty amount per violation has been established by statute. We believe the Public Health Service's establishment of the Data Bank and its instructions on how and in what form to report the required information give the provider community adequate time and warning to be aware of what requirements have been placed on them. The OIG will, of course, as in the case of assessing other civil money penalties, consider a full array of aggravating and mitigating factors in determining penalty amounts for failure to report required information relating to malpractice payments and for violating the confidentiality of reported information.

D. Section 1003.109—Notice of Proposed Determination

Comment: Several commenters stated that the regulations should be clarified to assure that institutions cannot be suspended from Medicare and Medicaid participation for failing to report malpractice settlement payments or violating confidentiality obligations.

Response: There is no authority under the Health Care Quality Improvement Act for imposing a suspension from the Medicare and Medicaid programs. Regulations set forth at 42 CFR 1003.105 specifically provide that a suspension may be imposed against persons subject to a penalty and assessment under § 1003.102 (a) and (b); the CMPs relating to violations of the Health Care Quality Improvement Act are set forth under § 1003.102(c). However, while we believe that the regulations in 42 CFR Part 1003 are sufficiently clear that suspension is applicable only to certain types of CMP cases, we are revising the language in § 1003.109(a) to clarify this point and to read, "penalty, assessment, and suspension, as applicable."

Comment: One commenter believed that in order to draw attention to the seriousness of a proposed adverse determination by the OIG, it would be appropriate for § 1003.109(a)(6) to highlight the instructions for responding to a proposal, as well as specifying the respondent's right to secure legal representation by the attorney of his or her choice.

Response: We believe that it is unnecessary and inappropriate to include such information in regulatory language and to provide legal advice to the subjects of administrative actions. The notice sent to individuals is designed to (1) inform them that failure to respond may result in the imposition of a penalty and (2) provide them with a copy of the rules that apply. We believe that this sufficiently communicates the seriousness of the action while concurrently apprising the subject of applicable legal provisions. We see no reason to distinguish the notice sent in this type case with that of other CMP cases, many of which impose higher penalties for violations.

Comment: One commenter believed that § 1003.109(a)(5) should require the Inspector General to state specifically what information was considered relevant with regard to the mitigating and aggravating factors considered.

Response: Under § 1003.109, the OIG is required to state in a notice of proposed determination what factors set forth in § 1003.106 were considered in determining the amount of a CMP. While at this time we do not have enough specific information to set forth and identify the full range of possible aggravating and mitigating factors, the letter sent to the person or entity subject to a penalty will clearly indicate what specific circumstances and factors were considered in setting the amount of the penalty.

E. Section 1003.114—Issues and Burden of Proof

Comment: Proposed § 1003.114(b) provides that the standard of proof will be "by a preponderance of the evidence." One commenter recommended that the standard of proof should be by "clear and convincing" evidence in contested cases.

Response: The civil money penalties contained in HCQIA are to be imposed and collected in the same manner as are CMPs under section 1128A(a) of the Social Security Act. The section 1128A(a) standard is proof by a "preponderance of the evidence." This is the traditional standard generally held applicable in administrative or civil proceedings and it has been upheld in CMP cases by courts that have considered it.

F. Section 1003.331—Records to the Public

Comment: One commenter indicated that the proposed regulations did not include any amendment to existing § 1003.131. This section states that all documents contained in the records of formal proceedings for imposing a penalty may be inspected and copied, unless ordered sealed by the Administrative Law Judge. The commenter believed that since the reports of medical malpractice claims are subject to the confidentiality provisions of HCQIA, the provisions of § 1003.131 should not be applicable to proceedings to impose CMPs for violations of the statute.

Response: While information reported pursuant to HCQIA is confidential, the use of such information in a CMP proceeding is not covered by the HCQIA provisions. We see no reason to distinguish the records of CMP proceedings under HCQIA from the records of such proceedings under the Social Security Act, which may also involve the use of confidential information. Any individual may seek protection of court documents by requesting that certain material be sealed. We believe this is the most appropriate way to protect confidential information while maintaining the public nature of these proceedings. Further, since all documents or information in a CMP case may not be confidential or may not reveal confidential information, we think it is inappropriate to require sealing all or particular types of records as a matter of course.

IV. Effective Date of the Final Rule

The final regulations providing for operation of the Data Bank were published on October 17, 1989 in the **Federal Register** (54 FR 42722). The opening of the Data Bank was announced in the August 1, 1990 **Federal Register** (55 FR 31239); and on September 1, 1990, the Data Bank became operational. The OIG final regulations provide for penalties that may be imposed for certain violations relative to the Data Bank. As a result, and because the Data Bank already has been operational for several months, the provisions contained herein will be effective on June 21, 1991.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare a regulatory impact analysis for any major rule, that is, any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic

regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that this rule does not meet the criteria for a major rule as defined by section 1(b) of the Executive Order. As indicated, the regulations establish new authority for the OIG to impose CMPs against those who fail to report required information and against those who breach the confidentiality of the information reported to the National Practitioner Data Bank. As such, we have concluded that this regulation will not have a direct effect on the economy or on Federal or State expenditures.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 5 U.S.C. 604(a), we are to prepare and publish a regulatory flexibility analysis unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action will have on small entities, and to develop lower cost or burden alternatives. We have determined that these regulations will have no significant economic impact. While some CMPs imposed by the OIG as a result of these regulations could have an impact on some small business entities, we do not anticipate that a substantial number of small entities will be affected by this rulemaking. Therefore, we have concluded that a regulatory flexibility analysis is not required for this rulemaking.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pubic Law. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. While the final regulations prepared by PHS contain specific information collection requirements, we have determined that these penalty provisions do not contain such information collection requirements and will not increase the Federal paperwork burden on the public and private sectors.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR chapter V, part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1003 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act, and Secs. 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j), 1395u(k), 11131(c) and 11137(b)(2)).

2. Section 1003.100 is revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j) and 1842(k) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7(c), 1320a–7a, 1395u(j), 1395u(k), 11131(c) and 11137(b)(2).

(b) *Purpose.* This part—

(1) Establishes procedures for imposing:

(i) Civil money penalties and assessments against persons who have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services Block Grant programs; and

(ii) Civil money penalties against persons who fail to report information concerning medical malpractice payments or who improperly disclose, use, or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(2) Establishes procedures for suspending from the Medicare and Medicaid programs, certain persons against whom a civil money penalty or assessment has been imposed; and

(3) Specifies the appeal rights of persons subject to a penalty or assessment.

3. Section 1003.101 is amended by adding, in alphabetical order, a definition for the term "medical malpractice action or claim" to read as follows:

§ 1003.101 Definitions.

* * * * *

Medical malpractice claim or action means a written complaint or claim demanding payment based on a physician's, dentist's or other health care practitioner's provision of, or failure to provide health care services, and includes the filing of a cause of action based on the law of tort brought in any State or Federal court or other adjudicative body.

* * * * *

4. Section 1003.102 is amended by redesignating existing paragraphs (c) (1) and (2) as paragraphs (d) (1) and (2) and republishing them; and by adding new paragraphs (c) and (d)(3) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(c) The OIG may impose a penalty against—

(1) Any person, including an insurance company, that fails to report information concerning a payment made under an insurance policy, self-insurance or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or action or a judgment against such physician, dentist, or other health care practitioner in accordance with section 421 of Public Law 99–660 (42 U.S.C. 11131) and as required by regulations at 45 CFR part 60.

(2) Any person that improperly discloses, uses, or permits access to information reported pursuant to part B of title IV of Public Law 99–660, in violation of section 427 of Public Law 99–660 (42 U.S.C. 11137) or regulations at 45 CFR part 60. The disclosure of information reported pursuant to part B of title IV in response to a subpoena or a discovery request is considered to be an improper disclosure in violation of section 427 of Public Law 99–660. However, disclosure or release by an entity of original documents or underlying records from which the reported information is obtained or derived is not considered to be an improper disclosure in violation of section 427.

(d)(1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for

payment described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

(3) In any case in which it is determined that more than one person was responsible for failing to report information that is required to be reported on a medical malpractice payment, or for improperly disclosing, using, or permitting access to information, as described in paragraph (c) of this section, each such person may be held liable for the penalty prescribed by this part.

5. Section 1003.103 is revised to read as follows:

§ 1003.103 Amount of penalty.

(a) The OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under paragraphs (a) and (b) of § 1003.102.

(b) The OIG may impose a penalty of not more than $10,000 for each payment for which there was a failure to report required information or for each improper disclosure, use, or access to information that is subject to a determination under paragraph (c) of § 1003.102.

6. Section 1003.105 is amended by revising paragraph (a) to read as follows:

§ 1003.105 Suspension from participation in Medicare and Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the OIG to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The OIG will notify the State agency if and when it waives suspension in response to such a request.

* * * * *

7. Section 1003.106 is amended by revising paragraphs (a), (b) introductory text, (b) (1), (2), and (3), and (c) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) (1) In determining the amount of any penalty or assessment, in accordance with § 1003.102 (a) and (b), the OIG will take into account:

(i) The nature of the claim or request for payment and the circumstances under which it was presented;

(ii) The degree of culpability of the person submitting the claim or request for payment;

(iii) The history of prior offenses of the person submitting the claim or request for payment;

(iv) The financial condition of the person presenting the claim or request for payment; and

(v) Such other matters as justice may require.

(2) In determining the amount of any penalty in accordance with § 1003.102(c), the OIG will take into account:

(i) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information;

(ii) The degree of culpability of the person in failing to provide timely and complete malpractice payment data or in improperly disclosing, using, or permitting access to information;

(iii) The materiality, or significance of omission, of the information to be reported with regard to medical malpractice judgments or settlements, or the materiality of the improper disclosure of, use of, or access to information;

(iv) Any prior history of the person with respect to violations of these provisions; and

(v) Such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered:

(1) *Nature and circumstances of the claim.* It should be considered a mitigating circumstance if all the items or services subject to a determination under § 1003.102 (a) and (b) included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than $1,000. It should be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if the respondent knew the item or service was not provided as claimed, or if the respondent knew that no payment could be made because he had been excluded from program reimbursement as specified in § 1003.102(a)(2) or because payment would violate the terms of an assignment agreement or an agreement with a State agency under § 1003.102(b).

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a determination under § 1003.102 (a) and (b), the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed for every item, service or incident subject to a determination under § 1003.102 (a) and (b)—

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages sustained by the United States, or any State, as a result of claims subject to a determination under § 1003.102 (a) and (b).

* * * * *

8. Section 1003.109 is amended by revising paragraph (a) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty or assessment, or to suspend a respondent from participation in Medicare or Medicaid, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment, and suspension, as applicable. The notice will include:

(1) Reference to the statutory basis for the penalty, assessment, and suspension, as applicable;

(2) With respect to determinations under § 1003.102 (a) and (b), a description of the claims and requests for payment with respect to which the penalty, assessment, and suspension are proposed (except in cases where the Inspection General is relying upon statistical sampling pursuant to § 1003.133, in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and shall also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) With respect to determinations under § 1003.102(c), a description of the violation and the circumstances under which the penalty is being imposed;

(4) The reason why such claims and requests for payment, or with respect to Title IV of Public Law 99–660, such failure to report required information or improper disclosure of, use of, or access to information, subject the respondent to a penalty, assessment, and suspension, as applicable; and the amount of the proposed penalty and assessment along with the period of proposed suspension, as applicable;

(5) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty, assessment, period of suspension, as applicable;

(6) Instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 30 days permits the imposition of the proposed penalty, assessment, and suspension, as applicable, without right to appeal, and of respondent's right to request an extension of time in which to respond to the notice and a copy of the rules contained in this part.

* * * * *

9. Section 1003.114 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1003.114 Issues and burden of proof.

(a) To the extent that a proposed penalty and assessment is based on claims or requests for payment presented on or after August 13, 1981, the Inspector General must prove by a preponderance of the evidence that the respondent presented or caused to be presented such claims or requests for payment as described in § 1003.102 (a) and (b).

(b) To the extent that a proposed penalty is based on a violation of title IV of Public Law 99–560, the Inspector General must prove by a preponderance of the evidence that the respondent failed to report medical malpractice payment information on a timely and complete basis, or the respondent improperly disclosed, used, or permitted access to information, as set forth in § 1003.102(c) and in 45 CFR part 60.

(c) Where a final determination has been rendered, in any proceeding in which the respondent was a party and had an opportunity to be heard, that the respondent—

(1) Presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 (a) and (b); or

(2) Failed within the scope of § 1003.102(c) to report medical malpractice payment information or improperly disclosed, used, or permitted access to information;

the respondent shall be bound by such determination in any proceeding under this part.

* * * * *

10. Section 1003.125 is amended by revising paragraph (c) to read as follows:

§ 1003.125 Initial decision; administrative review, finality.

* * * * *

(c) The findings of fact shall include a finding on each of the following issues for every item, service or occurrence with respect to which a penalty or assessment was proposed.

(1) Whether the item, service or occurrence is subject to a determination under § 1003.102;

(2) If the item, service or occurrence is subject to a determination under § 1003.102 whether there are mitigating or aggravating circumstances as described in § 1003.106.

* * * * *

Dated: December 3, 1990.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–13174 Filed 6–20–91; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89–07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Proceedings on request for enforcement of final rule.

SUMMARY: The Federal Maritime Commission published a final rule in this proceeding as 46 CFR 586.3 (1990). In response to a request for enforcement of the rule filed by Overseas Enterprises, Inc., the Federal Maritime Commission has instituted a Fact Finding Investigation into current operations in the trade and the waiver process under Government of Ecuador Resolution No. 012/87. The Fact Finding proceeding will be conducted as part of the proceeding in Docket No. 89–07 by a Fact Finding Officer appointed by the Commission pursuant to sections 19 (1)(b), (19)(6) and (19)(7) of the Merchant Marine Act of 1920, 46 U.S.C app. 876 (1)(b), (6) and (7).

DATES: Report of the Fact Finding Officer due on or before September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Carol J. Neustadt, Office of General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: This proceeding was initiated by the Federal Maritime Commission ("Commission" or "FMC") under section 19(1)(b) of the Merchant Marine Act of 1920 ("section 19"), 46 U.S.C. app. 876(1)(b). Section 19 authorizes the Commission to

make rules and regulations affecting shipping in the foreign trade * * * in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel operating

common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules or regulations * * *.

The Commission's Notice of Inquiry instituting the proceeding was based on the allegations of a U.S. company, Overseas Enterprises, Inc. ("OEI"), that it had been unable to reestablish a liquid bulk service in the U.S./Ecuador trade ("Trade") as a result of a decree of the Government of Ecuador ("GOE"), GOE Resolution No. 012/87.[1]

On January 16, 1990, the Commission issued a final rule in this proceeding, finding conditions unfavorable to shipping in the U.S. trades with Ecuador (55 FR 2071, January 22, 1990). The Commission's final rule ordered the Ecuadoran-flag carrier Maritima Transligra, S.A. ("Transligra") to pay a fee of $50,000 for each subsequent voyage it performed and to report to the Commission periodically on its operations in the Trade, including the names of vessels operated, dates of voyages and cargoes carried. To date no fees have been paid or reports filed pursuant to the rule.[2]

Alleging that the unfavorable conditions continue to exist in the Trade and that the final rule's sanctions are being evaded, OEI filed a request for Enforcement of the rule. A notice of the filing of OEI's Request for Enforcement, inviting public comments, was published in the **Federal Register** (56 FR 1372, January 14, 1991). Replies from two parties, Chemical Tankers of America, Inc. ("Chemical Tankers") and Shippers for Competitive Ocean Transportation ("SCOT"), were received prior to publication of the notice; none was received in response to the notice.

Background

The Commission's final rule finding conditions unfavorable to shipping in the trade was issued after lengthy proceedings, including repeated attempts by OEI as well as diplomatic efforts by the Department of State ("DOS") to secure access in the Trade for OEI. Transligra participated in the Commission's proceedings, arguing in several rounds of comments that the Commission lacked authority under section 19 to act on behalf of any person other than a U.S.-flag carrier [3] and that the Ecuadorian cargo reservation policies established in Resolution No. 012/87 and other decrees were an economic necessity. Comments and arguments submitted by Transligra were accompanied on two occasions by an affidavit of Transligra's Vice President, Wil W. Nefkens. Several shipper organizations, individual shippers, carriers and the DOS also participated in the proceeding.

Subsequent to issuance of the final rule, Transligra informed the Commission by letter from its counsel that it had sold the only Ecuadorian-flag vessel it operated in the Trade, the CHIMBORAZO, and would cease its liquid bulk operations as an Ecuadorian-flag carrier in the Trade. Thereafter, however, OEI provided information to the Commission which indicated that Transligra continued to operate vessels in the Trade. Additional information, discussed below, concerning the individual and corporate identity of the parties presently operating vessels transporting liquid bulk cargoes from U.S. Gulf ports to Ecuador was secured through inquiries undertaken by the Houston Office of the Commission's Bureau of Investigations and the DOS.

Request for Enforcement

OEI alleges in its Request for Enforcement that Transligra has continued service in the Trade, but that OEI "still is barred from effective participation." Waivers allegedly must be obtained on a voyage-by-voyage basis and are difficult to get.[4] OEI charges that it has been constantly obstructed by delays, as a result of which it is unable to make or meet commitments to customers and secure profitable cargoes. OEI indicates that it has taken up to 27 days to secure a waiver, despite the assistance of the Ecuadorian embassy in the U.S., and that such lengthy processing creates a major problem when the custom in the Trade is to book a cargo firm within 10 to 15 days prior to scheduled vessel departure. OEI also reports having made only two voyages in the Trade from January through September 1990. Transligra is said to remain the dominant carrier in the Trade, operating chartered vessels under the same operating structure but apparently with a changed "operating identity." Request, 3.

Replies to Request for Enforcement

Chemical Tankers, identifying itself as general agents for Andino Chemical Tankers, Inc. ("Andino"), advises by letter that the vessels identified by OEI as belonging to Transligra are in fact owned or chartered and operated by Andino, with all shipments to Ecuador moving under Andino bills of lading. Chemical Tankers states that Transligra "was closed when it sold its vessel MT CHIMBORAZO in May 1990, and is not operating any vessels whatsoever." The letter is signed by the Vice President of Chemical Tankers of America, Wil W. Nefkens.

SCOT reiterates its general opposition to GOE policies which restrict access to the Trade for third-flag carriers. SCOT concurs with the Commission's finding that conditions unfavorable to shipping exist in the Trade and states that its "members report no change in the conditions since the Commission's findings were published that would indicate a change in policy by the Government of Ecuador." SCOT refers on several occasions to service presently offered by "Transligra" or vessels operated by "Transligra or a sister company." Nevertheless, because of its members' needs for stable service and long-term contracts, SCOT emphasizes that any solution to the problem be implemented in a manner that assures continuity of essential service.[5]

Discussion

As noted above, OEI has provided documents and information to the Commission at various times since issuance of the final rule in this proceeding which, OEI contends, show that Transligra has continued to operate vessels in the Trade. Cargo manifests, which OEI reports are "from the Guayaquil port authority," list

[1] Resolution No. 012/87 of March 1987, reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadoran-flag vessels belonging to Ecuadoran shipping companies, or foreign vessels chartered by Ecuadoran shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 88 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

[2] Soon after issuance of the final rule, Transligra informed the Commission by letter that it had ceased operations as an Ecuadoran-flag carrier of liquid bulk cargoes.

[3] This position was rejected by the FMC in the order promulgating the proposed rule which discussed Transligra's jurisdictional arguments at length and reaffirmed the Commission's long-held interpretation of section 19. Notice of proposed rulemaking, 54 FR 34914 (August 18, 1989). These arguments were reiterated by Transligra in its comments on the proposed rule and again rejected by the Commission in promulgating the final rule. The Commission's interpretation of the scope of section 19 has been recently codified in the amendment of section 19 passed by the last Congress. Public Law No. 101-595, November 16, 1990, 104 Stat. 2979.

[4] "Waivers for OEI's participation on a voyage-by-voyage basis are difficult to obtain, if in fact they are issued * * *." Request, 2. Thus, although OEI implies that waivers are sometimes denied, it does not so state explicitly and provides no details of waivers requested, granted, refused, or processed.

[5] SCOT supported the final rule and the imposition of the sanctions in comments on the proposed rule.

Transligra as the operator of the vessels ANTISANA, GORGONILLA, and TAMA CARIBBEAN and reflect numerous port calls by these vessels during the year since issuance of the final rule.[6] A total of 15 voyages by these vessels is shown for the period January to September, 1990; 13 of these voyages would appear to have occurred after the effective date of the final rule. The liquid bulk cargoes listed on the manifests are shown as originating from U.S. Gulf ports, including New Orleans, Houston and Lake Charles.

Each of the vessels named above is identified in the comments filed by Chemical Tankers as being operated by Andino. The ANTISANA and GORGONILLA are said to be owned by subsidiaries of Andino and the TAMA CARIBBEAN time chartered by Andino. The ANTISANA was identified in the first of two Nefkens affidavits filed during earlier proceedings in this case as the vessel being built for Transligra as a replacement for the CHIMBORAZO, the only vessel then operated under the Ecuador flag by Transligra. In that affidavit, Nefkens identified himself as Vice President of Transligra, a position he had held since 1977.

Information supplied in interviews conducted by the Houston Office of the Commission's Bureau of Investigations with several present and former officers of companies apparently related to Transligra, suggests that movement of these cargoes in the Trade by the same persons or corporations has continued without disruption since issuance of the final rule. Although the vessels were reported by Nefkens, in Chemical Tankers' comment, to be owned by a subsidiary of Andino, it appears that the common owner of Transligra, Chemical Tankers and Andino is Holland Chemical International (HCI). Neither Chemical Tankers' comments nor the letter from counsel for Transligra informing the Commission of the sale of the CHIMBORAZO [7] referred to the apparent common ownership of these companies.

Thus, the record contains contradictory information from various sources.[8] There are, nevertheless, strong indications that the liquid bulk cargoes carried by Transligra continue to move in the Trade aboard vessels operated by the same persons formerly operating Transligra. As noted above, the comments filed on behalf of Chemical Tankers in response to the Request for Enforcement were filed by the same individual who filed two affidavits on behalf of Transligra. In addition, the comments of SCOT as well as the information transmitted by the U.S. Embassy leave the impression that shippers and even GOE authorities generally regard the present service as being provided by Transligra.

The Commission's final rule imposed sanctions specifically on Transligra, on two bases: Its status as an Ecuadorian-flag carrier, and as the sole beneficiary of the specific cargo reservation law at issue, Resolution No. 012/87, applicable only to the U.S.-Ecuador parcel tanker trade. However, insofar as the sanctions established in the final rule are concerned, taken as a whole, it appears from this record that the real party in interest may be HCI, which reportedly is or was the parent company of Transligra, Andino, and Chemical Tankers. It appears, moreover, that HCI has been able to continue serving the Trade with non-Ecuadorian flag vessels, routinely securing waivers which have been difficult if not impossible for the U.S. company, OEI, to secure on a commercially viable basis. Information indicates that the vessels operated by HCI/Chemical Tankers dominate the Trade, carrying 85 per cent of the cargo during the period from January to September, 1990. Thus, it appears that HCI may be receiving favorable treatment by the GOE despite the flagging of its vessels outside of Ecuador. There does not appear to be any basis in Ecuadorian law for the more favorable treatment apparently accorded the non-Ecuadorian flag operations of HCI/Chemical Tankers: There is no indication that Resolution No. 012/87 has been changed. Although the U.S. interests represented by OEI are apparently being subjected to discriminatory practices by the GOE, the party being favored by those practices may not be of Ecuadorian citizenship. It may have manufacturing and business interests resident in Ecuador, however. The corporate structure and vessel flagging employed by HCI/Chemical Tankers may have been used to evade the reporting requirements and sanctions imposed by the final rule. If, upon further investigation, this proves to be the case, the Commission will consider whether to implement § 586.3(d) of the Final rule, by requesting the U.S. Customs Service to refuse clearance to the named vessels at ports in the U.S. Gulf.

Based upon the apparent conditions described above, the Commission would like additional documentary or testimonial evidence, particularly with respect to the issues of the corporate relationships among Transligra, Andino, Chemical Tankers, HCI and the vessels presently being operated in the Trade. Supplementation of the present record as to the process by which waivers are granted is also desirable.

Recent amendments to section 19 have added Commission authority to secure information in an expeditious and timely manner in proceedings under that section. See Public Law 101–595. That amendment not only authorizes the Commission to require the filing of information by any person, including bulk operators, but also makes available the compulsory processes of discovery and subpoena used in adjudicatory proceedings.[9]

Therefore, in order to provide a better basis upon which the Commission can determine the most appropriate course of action in furtherance of the goals of this proceeding, the Commission will seek further information regarding the current operations of and relationships among Chemical Tankers, Andino, HCI and related companies. Such

[6] The manifests' origins with the Port Authority of Guayaquil, and the information reflected on them, were confirmed by information received through the U.S. embassy in Quito in response to a Commission request to the Department of State. The Embassy transmitted information from the Consulate at Guayaquil, including copies of additional manifests, which indicate that "Transligra Shipping Lines" did make vessel calls subsequent to the Commission's Final Rule and after the sale of the CHIMBORAZO. These manifests also show that the Panamanian-flagged vessels recorded as operating for Transligra in April, May and June, 1990 were the TAMA CARIBBEAN and the ANTISANA.

[7] In fact, that letter stated that "Neither Transligra nor any related company now operates, or plans to operate, any Ecuadorian-flag vessel; or now qualifies for or receives any benefits under the Ecuadorian Cargo Reservation laws; or can transport cargo in the Ecuadorian trade without a governmental waiver."

[8] For example, information provided to the U.S. Embassy from a source within the GOE agency responsible for administration of the cargo reservation laws and policies indicates that Transligra continued to operate through 1990. This is inconsistent with Nefkens' assertions in the comments of Chemical Tankers that Transligra "was closed when it sold * * * [the] CHIMBORAZO in May, 1990, and is not operating any vessels whatsoever." Nefkens' statement is itself inconsistent with the February, 1990 letter from Transligra's counsel in which it was reported that the CHIMBORAZO had been sold.

[9] The Commission may, under section 19(6) (a) * * * by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate; (b) * * * require a report or answers to questions to be made under oath; and (c) * * * prescribe the form and the time for response to a report and answers to questions; * * *. Under section 19(7), the Commission may * * * (b) * * * by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence; * * *

information will enable us to determine whether the existing sanctions, including any request to the U.S Customs Service to deny clearance to vessels operated by or on behalf of those companies, can or should be made applicable to those companies. Additional information will also be sought on the waiver system established by the GOE and the process by which waivers are granted for shipments moving on the vessels operated by Chemical Tankers and OEI.

The Commission will appoint a Fact Finding Officer to conduct this further inquiry within the context of this proceeding under section 19. The Fact Finding Officer shall have all the powers of the Commission pursuant to sections (6) and (7) of section 19, as amended, and shall report her findings to the Commission within 90 days of publication of this Order.

Following this process, the Commission will consider whether Chemical Tankers, HCI, Andino or some other entity may appropriately be found to be subject to the sanctions established at § 586.3(b) and (d) of the final rule as a successor, alter ego or substitute for Transligra. If so found, the Commission will consider restricting their sailings or cargoes in a manner reflecting the level of service permitted OEI or third-flag operators generally.

The Commission will also consider whether it continues to be appropriate to limit the application of these sanctions to carriers operating in the liquid bulk trade between the U.S. and Ecuador; *i.e.* whether these sanctions should be applied to Ecuadorian-flag carriers operating in other segments of the ocean-borne trade between the U.S. and Ecuador, as well as whether alternative or additional sanctions which could be imposed under section 19 might be effective. The Commission originally declined to impose sanctions more broadly, explaining in promulgating the proposed rule in August 1989, (54 FR 34,914) that sanctions would be imposed only on Transligra as the chief, if not sole, beneficiary of Resolution No. 012/87. The Commission may, however, reconsider that conclusion in light of subsequent indications that GOE administration of Resolution No. 012/87 has not been consistent, but appears to have focussed on benefits to Ecuadorian interests broader than those of Transligra. At this later stage in the proceeding, the Commission may also find it appropriate to consider whether the waiver system itself creates a condition unfavorable to shipping by the burdens it imposes on U.S. shippers, whether or not it is administered in a manner which discriminates among U.S. and other non-Ecuadorian companies engaged in the business of ocean shipping.

Therefore, it is ordered, That pursuant to sections 19 (6) and (7) of the Merchant Marine Act of 1920, as amended, and subpart R of the Commission's Rules of Practice and Procedure, 46 CFR 502.281 *et seq.*, as part of this proceeding, a nonadjudicatory investigation is hereby instituted into: (1) Corporate or other relationships of Transligra Maritima, S.A., Chemical Tankers of America, Inc., Holland Chemical International, Andino Chemical Tankers, Inc., Texas Maritime Agency, and related companies; and (2) the granting or securing of waivers under GOE 012/87 for shipments on non-Ecuadorian flag vessels. This Order constitutes the Order of Investigation for purposes of rule 283, 46 CFR 502.283 (1990).

It is further ordered, That pursuant to sections 19 (6) and (7) of the Merchant Marine Act of 1920, as amended, the Commission's powers to require the production of documents and information by order, deposition or subpoena, or any other manner authorized therein, are delegated to the Fact Finding Officer named below to conduct the nonadjudicatory investigation instituted above;

It is further ordered, That the Fact Finding Officer shall be Carol J. Neustadt of the Commission. Ms. Neustadt shall direct the Fact Finding proceeding and shall be assisted by such staff members as she may designate or as may be assigned by the Commission's Managing Director;

It is further ordered, That the Fact Finding Officer shall make a report of findings to the Commission no later than 90 days from the date of publication of this Order in the **Federal Register**; such report is to remain confidential unless and until the Commission rules otherwise; and

It is further ordered, That the Commission shall thereafter take such further action as may be warranted in this proceeding. By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14569 Filed 6-20-91; 8:45 a.m.]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 90-499, FCC 91-166]

Broadcast Auxiliary Services; Use of F3Y Emission for Encryption

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this decision, the Commission permits the use of F3Y emission for digitally encrypting communications in the Remote Pickup Broadcast Service. This action is taken in response to several requests for waiver of the Commission's Rules to use F3Y emission to prevent unauthorized use of communications in the Remote Pickup Broadcast Service. The action taken will permit licensees in the Remote Pickup Broadcast Service to use the digital encryption techniques to prevent interception and unauthorized use of communications (of particular concern to broadcasters are those communications related to news-gathering activities).

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Hank Van Deursen, Mass Media Bureau, Policy and Rules Division, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order (R&O) in MM Docket No. 90-499, adopted May 22, 1991 and released on June 11, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M St., NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This action is taken in response to a Notice of Proposed Rule Making (55 FR 48871, November 23, 1990) and a comment filed by Capital Cities/ABC, Inc. ("ABC") in response thereto. The Notice was prompted by the staff's receipt of several applications for authorization to use F3Y emission in the Remote Pickup Broadcast Service. Basically, the applicants desired to keep communications relating to news reporting confidential until the stories could be "aired." The broadcasters maintained that although third party

reception and use of such radio signals is prohibited by section 605 of the Communications Act of 1934, as amended, the aggressive competition among news crews to be first with an exclusive news story sometimes makes the extra level of protection afforded by digital encryption technology necessary.

2. In its comments, ABC supported the Commission's proposals and requested that stations using F3Y emission be required to transmit unscrambled analog or international Morse Code station identification at intervals not exceeding 15 minutes during operation, preferably using the broadcast station's part 73 call sign. This procedure would enable any party receiving interference from such operation to more rapidly identify the source and would minimally inconvenience the user of the F3Y emission. Moreover, the part 73 call sign can be traced easily through commercial sources without recourse to FCC files. The Commission agrees with ABC's suggestion and therefore concludes that this suggestion has merit and has amended the final rules appropriately.

3. In conclusion, the Commission notes that the proposed (and herein adopted) emission limits applicable to the F3Y emission permit only 20 kHz nominal occupied bandwidth operation. Thus, the bandwidth required for F3Y emission precludes its use at facilities in the 450.01 to 455.99 MHz band, which are authorized the use of 10 kHz bandwidth channels. Moreover, even though F3Y emission could be used on a normally wide bandwidth channel (e.g., a 100 kHz bandwidth channel in the 450.925 and 455.925 MHz band), only F3Y emissions authorized a 20 kHz bandwidth may be used in the Remote Pickup Service. This is necessary because the F3Y emission limitations are based on the use of a digitizing method which uses the minimum signal sampling rate necessary for satisfactory voice intelligibility. The resultant emissions are compatible with voice-modulated narrowband FM emissions traditionally used in the land mobile services and on most remote pickup channels. These "narrowband" emission limitations, which envision operation on 25 kHz or 30 kHz bandwidth channels, do not permit use of the wider emitted bandwidths that would be required for digitizing systems using the higher signal sampling rates necessary for quality reproduction of music or other high fidelity programming. Therefore, the Commission will not authorize wider bandwidth (i.e., greater than 20 kHz) F3Y emissions for use in scrambling high fidelity programming.

Final Regulatory Flexibility Analysis Statement

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have no adverse impact on small entities. This action merely allows licensees in the Broadcast Remote Pickup Service more flexibility and choice in how they transmit confidential information and other material that they do not wish disseminated without their control or approval.

5. Accordingly, It is ordered that, pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C.154 and 303, that effective July 25, 1991, part 74 of the Commission's Rules *Is Amended* as set forth below.

List of Subjects in 47 CFR Part 74

Broadcast Auxiliary Stations. Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

PART 74—[AMENDED]

47 CFR part 74 is amended as follows:

1. The authority citation for part 74 will continue to read as follows:

Authority: 47 U.S.C. 154, 303.

2. 47 CFR 74.462 is amended by revising the table in paragraph (b) and by adding new paragraphs (f) and (g) to read as follows:

§ 74.462 Authorized bandwidths and emissions.

* * * * *

(b) * * *

Frequencies (megahertz)	Authorized bandwidth [1] (kilohertz)	Maximum frequency deviation [2] (kilohertz)	Type of emission [3] [4]
25.87 to 26.03	40	10	A3, F3, F3Y, F9
26.07 to 26.47	20	5	A3, F3, F3Y, F9
152.87 to 153.35 [5]	30/60	5/10	A3, F3, F3Y, F9
160.89 to 161.37	60	10	A1, A2, A3, F1, F2, F3, F3Y, F9
161.64 to 161.76	30	5	A1, A2, A3, F1, F2, F3, F3Y, F9
166.25 to 170.15	25	5	A1, A2, A3, F1, F2, F3, F3Y, F9
450 to 455.99 (10 kHz channels)	10	1.5	A1, A2, A3, F1, F2, F3, F9
450.0875 to 455.6125 (25 kHz channels)	25	5	A1, A2, A3, F1, F2, F3, F3Y, F9
450.05 to 455.85 (50 kHz channels)	50	10	A1, A2, A3, F1, F2, F3Y, F9
450.925 and 455.925 (100 kHz channels)	100	35	A1, A2, A3, F1, F2, F3, F3Y, F9

[1] Notwithstanding the authorized bandwidths shown in the table, not more than 20 kHz bandwidth will be authorized in the case of F3Y emission.
[2] Applies where class F1, F2, F3, or F9 emission is used.
[3] Stations operating above 450 MHz shall show a need for employing A1, A2, F1, or F2 emission.
[4] The emission designators shown in the table no longer conform to those contained in subpart C of part 2 of the Commission's Rules and Regulations. They will be so-conformed after necessary modifications to broadcast auxiliary application processing programs are completed. For transmitting equipment which is type accepted, emission designators will appear in the Commission's Radio Equipment List. Equipment approved for emissions contained in subpart C of part 2 may be used by part 74 stations if their emissions are equivalent to the previous emission designators shown in the table.
[5] New or modified licenses for use of the frequencies will not be granted to utilize transmitters on board aircraft, or to use a bandwidth in excess of 3 kHz and maximum deviation exceeding 5 kHz.

* * * * *

(f) For those transmitters using the F3Y emission and operating in the frequency range between 25.87 MHz and 170.15 MHz, the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 5 kHz, up to and including 10 kHz: At least 83 Log_{10} (F_d/5) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 10 kHz, up to and including 250 percent of the authorized bandwidth: At least 29 Log_{10} ((F_d)exp2/11) decibels or 50 decibels, whichever is the lesser attenuation.

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the

authorized bandwidth: At least 43 plus 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

(g) For those transmitters using the F3Y emission and operating in the frequency range between 450.01 MHz and 455.925 MHz, the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 5 kHz, up to and including 10 kHz: At least 83 Log_{10} (F_d/5) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 10 kHz, up to and including 250 percent of the authorized bandwidth: At least 116 Log_{10} (F_d/6.1) decibels or 70 decibels, whichever is the lesser attenuation.

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 + 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note: The measurements of emission power can be expressed in peak or mean values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

3. 47 CFR 74.482 is amended by adding a new paragraph (e) and a note to read as follows:

§ 74.482 Station identification.

* * * * *

(e) For stations using the F3Y emission, identification shall be transmitted in the unscrambled analog (F3) mode or in International Morse Code pursuant to the provisions of (d) of this section at intervals not to exceed 15 minutes. For purposes of rule enforcement, all licensees using F3Y emissions shall provide, upon request by the Commission, a full and complete description of the encoding methodology they currently use.

Note: Stations are encouraged to identify using their associated part 73 station call sign.

[FR Doc. 91-14491 Filed 6-20-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-536; RM-7528, RM-7555, RM-7629]

Radio Broadcasting Services; Claxton, Waynesboro, GA and Bluffton, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 297C3 for Channel 296A at Claxton, Georgia, at the request of Evans Broadcasting Company, Inc., substitutes Channel 296C3 for Channel 296A at Waynesboro, Georgia, in response to a petition filed by Clifford Jones, and substitutes Channel 295C1 for Channel 295C2 at Bluffton, South Carolina, in response to a counterproposal filed by DHA Broadcasting, Inc. See 55 FR 47895, November 16, 1990, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-536, adopted June 6, 1991, and released June 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Channel 297C3 can be allotted to Claxton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.8 miles) northwest, in order to avoid short-spacings to Station WCRJ(FM), Channel 297C1, Jacksonville, Florida, and Station WKQB(FM), Channel 298C, St. George, South Carolina. The coordinates are North Latitude 32-10-20 and West Longitude 81-55-09. Channel 296C3 can be allotted to Waynesboro, Georgia, in compliance with the Commission's minimum distance separation with a site restriction of 18.9 kilometers (11.7 miles) northeast, in order to avoid a short-spacing to Station WLOW(FM), Channel 295C1, Bluffton, South Carolina. The coordinates are North Latitude 33-12-56 and West Longitude 81-52-39. Channel 295C1 can be allotted to Bluffton, South Carolina, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14 kilometers (8.7 miles) southwest, in order to avoid a shortspacing to Station WAGW(FM), Channel 296C3, Waynesboro, Georgia. The coordinates are North Latitude 32-09-14 and West Longitude 80-58-24. In addition, the authorizations of Station WCLA(FM), Claxton, Station WAGW(FM), Waynesboro, and Station WLOW(FM), Bluffton, are modified to specify the new channels. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 296A and adding Channel 297C3 at Claxton, and by removing Channel 296A and adding Channel 296C3 at Waynesboro.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 295C2 and adding Channel 295C1 at Bluffton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14762 Filed 6-20-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining share of the total allowable catch amount (TAC)

for sablefish allocated to hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (Central Gulf) for the 1991 fishing year is needed as a bycatch amount to support directed fisheries in that area for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using hook-and-line gear in the Central Gulf. This action is necessary to prevent the hook-and-line share of sablefish in that area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving sablefish stocks.

DATES: Effective from 12 noon, Alaska local time (A.l.t.), on June 17, 1991, through December 31, 1991. Comments are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. The TAC for target species and the "other species" category are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1991 TAC specified for sablefish in the Central Gulf is 10,575 mt (56 FR 8723; March 1, 1991). The portion of that TAC assigned to hook-and-line gear is 8,460 mt.

Under §§ 672.20(c) (2) and 672.24(c)(3)(i), if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any regulatory area or district is likely to be reached, the Regional Director may establish a directed fishing allowance. In establishing a directed fishing allowance, the Regional Director shall consider the amount of sablefish that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for sablefish in the specified regulatory area or district by that gear type.

The Regional Director has determined that the remaining hook-and-line gear share of sablefish in the Central Gulf, 425 mt, will be necessary as bycatch to support remaining groundfish fisheries in that area. With this action the Regional Director is establishing a directed fishing allowance of 8,035 mt for the Central Gulf and is prohibiting directed fishing for sablefish taken with hook-and-line gear in the Central Gulf, effective 12:00 noon, A.l.t., June 17, 1991. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish retained onboard hook-and-line vessels in the Central Gulf at any time during a trip must be less than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of sablefish by hook-and-line gear that will occur if amounts of the sablefish TACs that are allocated to hook-and-line gear are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–14783 Filed 6–17–91; 4:48 pm]

BILLING CODE 3510–22–M

50 CFR Parts 672 and 675

[Docket No. 900833–1095]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards and request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), announces Pacific halibut and red king crab bycatch rate standards for the second half of 1991 for purposes of the vessel incentive program that has been implemented to reduce prohibited species bycatch rates in the groundfish trawl fisheries. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in specified groundfish fisheries included in the incentive program. The intent of this action is to enhance prohibited species bycatch management and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 am, Alaska local time (A.l.t.), July 1, 1991, through 12:00 midnight, December 31, 1991. Comments on this action are invited through July 2, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9100 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the FMP for Groundfish of the Gulf of Alaska. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations appearing at 50 CFR part 611 for the foreign fishery and at 50 CFR parts 672 and 675 for the

U.S. fishery. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

The interim final rule for revised Amendment 16 to the BSAI FMP and revised Amendment 21 to the GOA FMP (56 FR 21619; May 10, 1991) implemented a vessel incentive program to reduce halibut and red king crab bycatch rates in specified groundfish trawl fisheries. Under the incentive program, operators of individual trawl vessels are held accountable for their bycatch of halibut in the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fisheries, and the GOA "bottom rockfish" trawl fishery. Vessel operators also are held accountable for their bycatch of red king crab in the BSAI flatfish fisheries in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at § 672.26(b) and § 675.26(b).

Regulations implementing the incentive program require the Regional Director to publish a notice in the **Federal Register** prior to January 1 and July 1 of each year, specifying halibut and red king crab bycatch rate standards for each fishery monitored under the incentive program. These standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Any vessel whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program.

Bycatch rate standards for the first half of 1991 were published in the **Federal Register** as part of the rulemaking that implemented the incentive program. At its April 22–27, 1991 meeting, the North Pacific Fishery Management Council recommended bycatch rate standards for the second half of 1991. These standards are set forth in Table 1.

Table 1.—Bycatch Rate Standards, by Fishery and Quarter, for the Second Half of 1991 for Purposes of the Vessel Incentive Program in the BSAI and GOA.

Halibut bycatch as kg of halibut/mt of allocated groundfish catch	
Fishery and quarter	1991 bycatch standard
BSAI Pacific cod	
Qt 3	22.5
Qt 4	22.5
BSAI flatfish	
Qt 3	3.0
Qt 4	3.0
Halibut bycatch as kg of halibut/mt of allocated groundfish catch	
GOA rockfish	
Qt 3	40.0
Qt 4	40.0
GOA Pacific cod	
Qt 3	32.9
Qt 4	51.5
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish	
Qt 3	1.50
Qt 4	1.50

The Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information, as required by § 672.26(c) and § 675.26(c):

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f) and § 675.21;

(D) Anticipated groundfish harvests; and

(E) Anticipated seasonal distribution of fishing effort for groundfish.

Observer data for the BSAI Pacific cod fishery during the last half of 1990 is not available because the fishery was closed during this period due to halibut prohibited species catch (PSC) restrictions. Therefore, the Council recommended that the bycatch rate standard for the BSAI Pacific cod trawl fishery during the last half of 1991 be set at the average rate observed on trawl vessels participating in this fishery through the first calendar quarter of 1991, or 22.5 kilograms of halibut per metric ton of groundfish (2.25 percent). The Council recognized that the Pacific halibut bycatch allowance apportioned to the "other fishery" under § 675.21, including that for Pacific cod, will likely cause the Pacific cod fishery to be closed early in the third quarterly reporting period. Nonetheless, the Council determined that a bycatch rate of 2.25 percent is appropriate in view of the Council's intent for the incentive program to reduce halibut bycatch rates in the Pacific cod fishery.

The remaining bycatch rate standards set forth in Table 1 were originally recommended by the Council at its December 3–7, 1990, meeting. These standards were subsequently reaffirmed for the last half of 1991 by the Council at its April 1991 meeting. When the Council reaffirmed the halibut bycatch rate of 0.3 percent for the BSAI flatfish fishery, which is based on rates observed in historical joint venture fisheries, it reviewed actual bycatch rates observed during the second half of 1990. Although the 1990 rate was less than 0.2 percent, the Council considered this rate to be too constraining, and opted to affirm the historical joint venture rate. The Council further determined that the 1991 TAC amounts specified for yellowfin sole and other flatfish could be harvested by trawl vessels under the halibut PSC restrictions set forth for these fisheries at § 675.21 if vessels maintained halibut bycatch rates at the recommended bycatch rate standard.

In reaffirming its recommended halibut bycatch rate standards for the GOA Pacific cod trawl fishery, the Council noted that most of the GOA is closed to directed fishing for Pacific cod for the remainder of the year because of attainment of total allowable catch (TAC) amounts. Even so, the Council recommended that the GOA halibut bycatch rate standards for the Pacific cod trawl fishery be based on average 1990 bycatch rates observed in the Central Regulatory Area, rather than in the GOA as a whole. The Council made this recommendation because (1) 1990 observer data showed bycatch rates of halibut in the Central Gulf are typically higher than in other areas of the GOA, and (2) a bycatch rate standard based on a GOA-wide average would be too conservative for the Pacific cod fishery in the Central Regulatory Area.

Last, the Council's recommended rate for the GOA "bottom rockfish" fishery was based on historical bycatch rates in the GOA and a desire to restrict halibut bycatch rates to levels consistent with the intent of the Council to reduce halibut bycatch rates under the incentive program. Observed halibut bycatch rates in this fishery during the first 3 months of 1991 were over three times higher than the rates observed during this period in 1990. Additional harvests of rockfish are anticipated in 1991 under existing halibut PSC restrictions, but halibut bycatch rates must be reduced in the rockfish fishery if this fishery is to avoid taking a disproportionate share of the halibut PSC limit specified for trawl gear under § 672.21. Therefore, the Council recommended to maintain the halibut bycatch rate standard at more historic levels, rather than at 1991 observed rates, to more fully support its intent for the incentive program to reduce halibut bycatch rates in the "bottom rockfish" fishery.

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information

and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). He concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1991 as set forth in Table 1. These bycatch rate standards may be revised by notice in the **Federal Register** when deemed appropriate by the Regional Director pending his consideration of the information set forth at §§ 672.26(c) and 675.26(c).

Classification

This action is taken under 50 CFR 672.26 and 675.26 and complies with Executive Order 12291.

This notice must be effective by July 1, 1991, to avoid a lapse in vessel accountability under the vessel incentive program. Without this accountability, prohibited species bycatch rates will increase in the groundfish trawl fisheries, prohibited species bycatch allowances will be reached sooner, specified groundfish trawl fisheries will be closed, and owners and operators of groundfish trawl vessel will incur additional forgone revenues. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to extend prior notice and comment on this notice beyond July 1, 1991, or to delay its effective date.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14776 Filed 6-17-91; 4:48 pm]

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Proposed Rules

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[AMS-FV-91-235]

RIN 0581-AA47

Potato Research and Promotion Plan; Procedure for the Conduct of Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action gives notice of proposed amendments to the Potato Research and Promotion Plan (Plan), the Rules and Regulations issued thereunder, and the Procedure for the Conduct of Referenda in accordance with amendments made to the Potato Research and Promotion Act by the Food, Agriculture, Conservation, and Trade Act of 1990. The proposed amendments to the Plan include: (1) Levying assessments on imported potatoes, potato products, and seed potatoes equal to that levied on domestic production and subject importers to the terms and conditions of the Potato Research and Promotion Act; and (2) eliminating the provision of the Plan which permits refunds of assessments. In addition, conforming amendments are proposed to the Rules and Regulations issued under the Plan and the Procedure for the Conduct of Referenda.

DATES: Comments must be received by July 22, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Arthur L. Pease, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–So., P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3915.

SUPPLEMENTARY INFORMATION: In response to an invitation to submit proposals for amendments to the Potato Research and Promotion Plan (Plan) published in the **Federal Register** on February 28, 1991, (Vol. 56. No. 40), the National Potato Promotion Board submitted a proposal. The amendments to the Plan (7 CFR 1207.301–1207.412) (Plan) are proposed in accordance with recent amendments to the Potato Research and Promotion Act, as amended (84 Stat. 2041, 7 U.S.C. 2611–2627), hereinafter referred to as the Act. Amendments to the Act were made by sections 1935–1946 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) (Farm Bill). In view of this legislation, changes are also proposed in the Rules and Regulations (7 CFR 1207.500–1207.550) and in the Procedure for the Conduct of Referenda (7 CFR 1207.200–1207.207) issued pursuant to the Plan.

This rule has been reviewed by the Department in accordance with Executive Order 12291 and U.S. Department of Agriculture (USDA) Regulation 1512.1 and has been determined to be a "non-major" rule under the criteria contained in the Executive Order.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities. The amendments impose a reporting and recordkeeping burden on importers of Irish potatoes and potato products for consumption by humans and on importers of seed potatoes.

There are an estimated 2,000 handlers and 6,000 producers who are currently subject to the provisions of this Plan, and there are approximately 80 importers of potatoes and potato products for human consumption and approximately 25 importers of seed potatoes who would be subject to the Plan as proposed to be amended. The majority of these persons would be classified as small businesses under the criteria established by the Small Business Administration.

The reporting burden on importers, if submission of reports becomes necessary, would require approximately 6 hours per year for each importer of potatoes and potato products for human consumption and for each importer of seed potatoes.

The changes proposed in the Plan, rules and regulations, and procedures for conduct of referenda are a result of amendments to the Act. The economic impact of these proposed changes on importers, which are described herein, is not expected to be significant since the assessment to be levied on imports of potatoes, potato products for human consumption, and seed potatoes is the same as that imposed on domestic producers (currently 2 cents per hundredweight or equivalent for potato products). As noted above, the proposed changes would also authorize reporting requirements and impose recordkeeping requirements on importers. However, the economic impact of these requirements is not expected to be significant, in that normal business records can be used for completing any authorized reports, and the recordkeeping requirements are consistent with normal business practices. The amendments would also eliminate refunds of assessments. However, currently approximately 95 percent of producers do not seek refunds. Refunds are made on only 18 percent of the assessments paid. Assessment income for fiscal year 1990 was $6,072,669. Thus, the elimination should not be significant. The increase in funds to the National Potato Promotion Board (Board) from nonrefundable assessments on imports is estimated at $160,000, less than 3 percent of the total projected assessments collected. Furthermore, the research and promotion program is expected to benefit producers, handlers, and importers alike by expanding and maintaining new and existing markets. Accordingly, the Administrator of the AMS has determined that this action

will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act (PRA) of 1980 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB Control No. 0581–0093. OMB approval of information collection and recordkeeping requirements expires March 31, 1994. The Plan, as proposed to be amended herein, would authorize the Board to collect assessments on potatoes, potato products for human consumption, and seed potatoes imported into the United States from foreign countries. Importers of such potatoes, potato products, and seed potatoes would be required to submit such reports to the Board as it deems necessary to administer the provisions of the Plan. However, no immediate reporting requirements by importers are contemplated at this time since the Board plans to have the U.S. Customs Service collect assessments on imported potatoes, potato products, and seed potatoes. Importers would be required to maintain records, and the records would be subject to inspection. Records would be required to be maintained for 2 years beyond the first period of their applicability.

It is estimated that approximately 105 importers would be subject to these requirements. Because the Board contemplates levying the assessment at the time of importation or withdrawal for consumption into the United States, there would be no added reporting requirements on importers. Importers nominated for membership on the Board would complete a membership background information sheet. The estimated number of respondents to this form would be at most five nominees with an estimated reporting burden of 0.5 hours per response. Such information sheets have been previously approved by the OMB and assigned OMB number 0505–011.

In addition to importers, handlers in the States of Alaska and Hawaii would be required to submit the same reports as those handlers located in the 48 contiguous United States are currently required to submit. It is estimated there are approximately six handlers in Alaska and Hawaii, and the added maximum burden would be about 0.33 hours for each handler per month or 3.0 hours per year.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC.

This proposed rule invites comments on changes to the Plan, the rules and regulations issued thereunder, and to the procedure for the conduct of referenda. The changes are in accordance with the amendments to the Act made by the Farm Bill.

The Act, as amended, changes the definition of potatoes to include potatoes produced in foreign countries and imported into the United States. Currently, there is no provision in the Plan for levying assessments on imported potatoes. The Act, as recently amended, provides authority for such a provision, but the continuance of the provision is contingent on approval by potato producers and importers in a referendum to be conducted within 24 months. Thus, the Plan is proposed to be amended to include assessments on potatoes produced in foreign countries and imported into the United States. Further, the recently amended Act requires the inclusion under any Plan of potatoes produced in the States of Alaska and Hawaii. Thus, it is also proposed to amend the Plan to include potatoes produced in the States of Alaska and Hawaii.

To facilitate collection of the assessments on imported potatoes and potato products, the Board recommends and the Secretary proposes that the United States Customs Service of the Department of the Treasury be designated as the collecting agency for assessments levied on such imports. Since all imported potatoes, potato products, and seed potatoes are imported into the United States under the supervision and control of the Customs Service, this is an appropriate and efficient method to collect the Board's assessment. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collect these potato assessments. An agreement between the USDA and the Customs Service would be entered into to implement this action.

If imports are to be included in the Plan, the Act, as amended, requires importer representation on the Board. Up to five representatives of importers, appointed by the Secretary, are authorized to serve as importer members on the Board. At the current time, the Secretary is proposing to add two importer members based on the same criteria as that used to calculate the number of producer positions on the Board. This would be roughly equivalent to the number of producer members that would be appointed to the Board based on hundredweights of potatoes produced by domestic producers. This representation would enable importers to participate in developing the Board's programs, plans and projects, and express their views and concerns on how Board funds are used. To obtain nominees for the importer member positions on the Board, importer associations or organizations will be requested by the Board to furnish eligible nominees. Thus, appropriate amendments implementing importer representation are being proposed.

The Act, as recently amended, also authorizes the elimination of assessment refunds. Pursuant to the request of the National Potato Promotion Board (Board), it is also proposed to eliminate the current provisions of the Plan and Rules and Regulations providing for such refunds.

If imports are to be included in the Plan, or if refunds of assessments are to be eliminated, the Act, as recently amended, requires the establishment of an interest-bearing escrow account equal to 10 percent of the Board's proceeds from assessments collected from both domestic producers and importers. This escrow fund is to be established after the amendments to the Plan are finalized and before a referendum is conducted among producers and importers to determine if the amendments made to the Plan continue in effect or if the Plan, except for the provision adding Alaska and Hawaii to the covered States, reverts back to its pre-amendment status. As noted earlier, this referendum must be held within 24 months after the amended Plan is effective. If producers and importers favor continuing the amendments, then the escrow funds become part of the Board's general fund.

However, if producers and importers voting in the referendum do not favor continuing the amended Plan, then the escrow funds will be used to pay producers and importers who request a refund of their assessments paid. Such requests for refunds shall be submitted to the Board during a 90-day period which begins 90 days after publication of the results of the referendum. If the requests for refunds exceed the amount in the escrow account, then the funds will be prorated among those requesting a refund. Appropriate amendments are proposed to implement the escrow account and the refund provisions of the Act.

The Act, as amended, changes the voting requirements in all referenda by authorizing importers to vote in any referendum when importers would be

subject to the terms and conditions of the Plan. Producers and importers voting in referenda vote on the basis of one person or entity having one vote.

The recent amendments to the Act eliminate any consideration of production or importation volumes with regard to voter approval. Also, this statutory change provides that the vote shall be determined by majority vote. Amendments are proposed to the Plan and Rules and Regulations to reflect these changes in the Act.

Various other minor changes are proposed to achieve conformity between the Act as amended, the Plan, the Rules and Regulations, and the Procedure for the Conduct of Referenda.

All written comments received in response to this publication by the date specified herein will be considered prior to finalization of the proposed amendments.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7, part 1207 be amended to read as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1207 is revised to read as follows:

Authority: 7 U.S.C. 2611 *et seq.*

2. Section 1207.302 is revised to read as follows:

§ 1207.302 Act.

Act means the Potato Research and Promotion Act (title III of Pub. L. 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041), as amended.

3. Section 1207.306 is amended to read as follows:

§ 1207.306 Potatoes.

Potatoes means any or all varieties of Irish potatoes grown by producers in the 50 states of the United States and grown in foreign countries and imported into the United States.

4. Sections 1207.312 and 1207.313 are added to read as follows:

§ 1207.312 Importer.

Importer means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

§ 1207.313 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

5. Section 1207.320 is amended by revising paragraph (a), redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively, adding a new paragraph (c), revising newly redesignated paragraphs (d) and (f) to read as follows:

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the "Board", composed of producers, importers, and a public member appointed by the Secretary. Producer members shall be appointed from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322. Importer members shall be appointed from nominations submitted by importers pursuant to § 1207.322. The public member shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary, and shall be appointed by the Secretary.

* * * * *

(c) The number of importer member positions on the Board shall be based on the hundredweights of potatoes, potato products equivalent to fresh potatoes, and seed potatoes imported into the United States but shall not exceed five importer members. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, there shall be one importer member position for each 5 million hundredweight, or major fraction thereof, of potatoes, potato product equivalents, and seed potatoes imported into the United States.

(d) Any State in which the potato producers fail to respond to an officially called nomination meeting may be combined with an adjacent State for the purpose of representation on the Board, in which case the Board's producer member selected by the Secretary will represent both States, but his voting power under § 1207.325 shall not be increased.

* * * * *

(f) Should the Board fail to nominate a public member, the Secretary may appoint such member.

6. Section 1207.321 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1207.321 Term of office.

* * * * *

(b) The terms of office of the Board's producer members shall be so determined that approximately one-third of the terms will expire each year. Importer and public member terms shall run concurrently. All members serving on the Board on the effective date of this amendment to the Plan shall continue serving the term to which they were appointed.

* * * * *

(d) No member shall serve for more than two full successive terms of office

7. Section 1207.322 is amended by revising the section heading, revising the introductory text to the section, redesignating current paragraph (d) to paragraph (e), adding a new paragraph (d), and revising the first sentence of newly redesignated paragraph (e) to read as follows:

§ 1207.322 Nominations and appointment.

The Secretary shall select the producer, importer, and public members of the Board from nominations which may be made in the following manner.

* * * * *

(d) The importer members shall be nominated by importers of potatoes, potato products and/or seed potatoes. The number of importer members on the Board shall be announced by the Secretary and shall not exceed five members. The Board may call upon organizations of potato, potato products and/or seed potato importers to assist in nominating importers for membership on the Board. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association,

(2) What percentage of the total number of importers is represented by the association,

(3) Is the association representative of the potato, potato product, and seed potato import industry,

(4) Does the association speak for potato, potato product, and seed potato importers, and

(5) Other relevant information as may be warranted.

(e) The public member shall be nominated by the producer and importer members of the Board. * * *

8. Section 1207.328 is amended by revising paragraphs (f) and (h), and adding paragraphs (j) and (k) to read as follows:

§ 1207.328 Duties.

* * * * *

(f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

* * * * *

(h) To act as intermediary between the Secretary and any producer, handler, or importer;

* * * * *

(j) To prepare and submit to the Secretary such reports from time to time as may be prescribed by the Secretary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board; and

(k) To establish an interest-bearing escrow account, pursuant to section 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board, during the period from the effective date of this amended Plan to the time a referendum, required by section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, is conducted on these amendments, by 10 percent. If the Plan is approved pursuant to the referendum, all funds in the escrow account shall be returned to the Board for its use. If the amendments to the Plan are not approved in the referendum, then the funds in the escrow account will be refunded to producers and importers who demand such refunds in accordance with the requirements under section 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990. If the escrow account funds are not sufficient to refund the total amount demanded by all eligible producers and importers, then the funds in the escrow account will be prorated among those producers and importers properly demanding a refund. Any funds remaining in the escrow account after disbursement of such funds to those producers and importers who demanded a refund shall be returned to the Board for its use.

9. Section 1207.342 is amended by revising the first sentence of paragraph (a), redesignating current paragraphs (c) and (d) as paragraphs (e) and (f), and adding new paragraphs (c) and (d) to read as follows:

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued by the Secretary. * * *

* * * * *

(c) The importer of imported potatoes, potato products, or seed potatoes shall pay the assessment to the Board at the time of entry or withdrawal for consumption of such potatoes and potato products into any State.

(d) The assessment on imported tablestock potatoes and frozen or processed potato products for ultimate consumption by humans and on seed potatoes shall be established by the Board so that the effective assessment shall be equal to that on domestic production.

* * * * *

10. Section 1207.343 is revised to read as follows:

§ 1207.343 Refunds.

Any producer or importer who has paid an assessment under this amended Plan and who is not in favor of supporting the research and promotion program as provided for in this Plan shall have the right to demand and receive from the Board a one-time refund of such assessment upon submission of proof satisfactory to the Board that the assessment for which the refund is sought has been paid; *Provided,* That the amendment to the Plan to eliminate provisions for refunds of assessments is not approved pursuant to a referendum conducted under section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. Any such demand shall be made personally by such producer or importer on a form which shall be signed by such producer or importer and within a time period prescribed by the Board pursuant to the regulations. A handler who is also a producer shall be eligible for refunds only on potatoes produced by that handler.

11. Section 1207.350 is amended by redesignating paragraphs (a), (b), and (c) as (1), (2), and (3), respectively, and designating the introductory text to the section as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 1207.350 Reports.

* * * * *

(b) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

12. Section 1207.351 is amended by revising the first sentence of the paragraph to read as follows:

§ 1207.351 Books and records.

Each handler or importer subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary such books and records as are appropriate and necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. * * *

13. Section 1207.352 is revised to read as follows:

§ 1207.352 Confidential treatment.

All information obtained from books, records, or reports required pursuant to this part shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this Plan, which statements do not identify the information furnished by any person, or

(b) The publication by direction of the Secretary of the name of any person violating this Plan, together with a statement of the particular provisions of this Plan violated by such person.

14. Section 1207.362 is amended by revising paragraph (b) to read as follows:

§ 1207.362 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the potato producers and importers to determine whether potato producers and importers favor termination or suspension of this plan. The Secretary shall suspend or terminate such plan at the end of the marketing year whenever the Secretary determines that its suspension or termination is favored by a majority of the potato producers and importers

voting in such referendum who, during a representative period, determined by the Secretary, have been engaged in the production or importation of potatoes or potato products and who produced or imported more than 50 percent of the volume of the potatoes or potato products produced or imported by the producers and importers voting in the referendum.

15. Section 1207.363 is amended by revising paragraph (d) to read as follows:

§ 1207.363 Proceedings after termination.

* * * * *

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1207.412 [Removed]

16. The undesignated center heading above § 1207.412 and § 1207.412 are removed.

17. Section 1207.500 is amended by removing paragraphs (a), (b), (c), (d), (e), (f), (g), and (h), adding a new paragraph (a), and redesignating paragraph (i) as paragraph (b) to read as follows:

§ 1207.500 Definitions.

(a) Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Potato Research and Promotion Plan.

* * * * *

18. Section 1207.502 is added to read as follows:

§ 1207.502 Determination of membership.

Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the three preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture

19. Section 1207.503 is amended by revising the last sentence of paragraph (a), redesignating paragraph (b) as paragraph (c) and revising the newly redesignated paragraph (c), and by adding paragraphs (b) and (d) to read as follows:

§ 1207.503 Nominations.

(a) * * * A list of nominees shall be submitted to the Secretary for consideration by November 1 of each year.

(b) Nominations for importer member positions to the Board shall be obtained from potato or potato product importer associations or organizations. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association,

(2) What percentage of the total number of importers is represented by the association,

(3) Is the association representative of the potato and potato product import industry,

(4) Does the association speak for potato and potato product importers, and

(5) Other relevant information as may be warranted.

(c) Such meetings shall be well publicized with notice given to producers, importers, and the Secretary at least 10 days prior to each meeting.

(d) The public member shall be nominated by the producer and importer members of the Board.

20. Section 1207.507 is amended by revising paragraph (a) to read as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 27 members to include 25 producers, 1 importer, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and six Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

21. Section 1207.510 is revised to read as follows:

§ 1207.510 Levy of assessments.

(a) An assessment of 2 cents per hundredweight shall be levied on all potatoes produced within the United States and on all tablestock, frozen or processed potatoes imported into the United States for ultimate consumption as human food and all seed potatoes imported into the United States.

(b) Potatoes used for other nonhuman food purposes, including starch, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

(c) No more than one such assessment shall be made on any potatoes or potato products.

(d) No assessments shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(e) No assessments shall be levied on otherwise assessable potatoes which are contained in imported products wherein potatoes are not a principal ingredient.

(f) The Board shall provide a formula to the Customs Service to convert imported frozen or processed potato products to fresh hundredweight equivalents for assessment purposes.

22. Section 1207.512 is amended by revising the introductory text to the section to read as follows:

§ 1207.512 Designated handler.

The assessment on each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth:

* * * * *

23. Section 1207.513 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (b)(1), revising the first sentence of newly redesignated paragraph (b)(1), adding paragraph (b)(2), and revising paragraph (c)(1) to read as follows:

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced potatoes shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce. The assessment on imported potatoes, potato products, and seed potatoes shall become due at the time of entry or withdrawal for consumption into the United States.

(b) *Responsibility for payment.* (1) The designated handler is responsible for payment of the assessment on domestically produced potatoes. * * *

(2) The Customs Service shall collect payment of assessment on imported potatoes, potato products, and seed potatoes from importers and forward such assessment per agreement between the Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessment directly to the Board of any assessment due but not collected by the Customs Service at the time of entry or

withdrawal for consumption into the United States. An importer may apply to the Board for reimbursement of assessments paid on exempted products.

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB, not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

* * * * *

24. Section 1207.514 is revised to read as follows:

§ 1207.514 Refunds.

A one-time refund of assessments may be obtained by a producer or importer only by following the procedure prescribed in this section; *Provided,* That the amendment to the Plan to eliminate provisions for refunds of assessments is not approved pursuant to a referendum conducted under section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990.

(a) *Application form.* A producer or importer shall obtain a refund form from the Board by written request which shall bear the producer's or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate the partner's or officer's title.

(b) *Submission of refund application to the Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to the Board during a 90-day period which begins 90 days after publication of the results of the referendum held pursuant to section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. The refund application shall show:

(1) Producer's or importer's name and address,

(2) Handler's or handlers' name(s) and address(es),

(3) The number of hundredweight on which the refund is requested,

(4) Date or inclusive dates on which assessments were paid,

(5) Total amount requested to be refunded,

(6) The producer's or importer's signature.

Where more than one producer or importer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case, the refund application shall show the names, addresses, proportionate shares, and the signature of each producer or importer.

(c) *Proof of payment of assessment.* Evidence satisfactory to the Board that payment of assessment has been made shall accompany the producer's or importer's refund application. Such evidence would include, but not be limited to, receipts given to the producer by the handler, or copy thereof, import documents showing payment, and receipts of payment by importers directly to the Board.

(d) *Payment of refund.* Should the amendment to the Plan to eliminate provisions for refunds of assessments not be approved pursuant to the referendum, the Board shall pay refund requests to producers and importers who properly demand such refunds within 60 days after the closing date for requesting such refunds as specified in paragraph (b) of this section. If funds in the escrow account, established pursuant to section 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, are not sufficient to refund the total amount demanded by all eligible producers and importers, then the funds in the escrow account shall be prorated among those eligible producers and importers demanding a refund.

25. Section 1207.515 is amended by revising the first sentence to read as follows:

§ 1207.515 Safeguards.

The Board may require reports by designated handlers and importers on the handling, importation, and disposition of exempted potatoes.* * *

26. Section 1207.532 is amended by revising the introductory text of the section to read as follows:

§ 1207.532 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least two years beyond the end of the marketing year of their applicability:

* * * * *

27. Section 1207.533 is revised to read as follows:

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

28. Section 1207.540 is revised to read as follows:

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the Plan.

§ 1207.550 [Removed]

29. Section 1207.550 is removed.

30. Section 1207.200 is revised to read as follows:

§ 1207.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a potato research and promotion plan, or the continuance, termination, or suspension of such a plan, is approved or favored by producers and importers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

31. Section 1207.201 is amended by revising paragraph (a) and by adding paragraph (i) to read as follows:

§ 1207.201 Definitions.

(a) *Act* means the Potato Research and Promotion Act (title III of Public Law 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041), as amended.

* * * * *

(i) *Importer* means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

32. Section 1207.202 is amended by revising paragraph (a), the first two sentences of paragraph (b), and (c) to read as follows:

§ 1207.202 Voting.

(a) Each person who is a producer or importer, as defined in this subpart, at the time of any referendum and who also was a producer or importer during the representative period, shall be entitled to only one vote in the referendum, except that in a landlord-tenant relationship, wherein each of the parties is a producer, each such

producer shall be entitled to one vote in any referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or importer, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, importer, or estate. Any individual so voting in a referendum shall certify that that individual is an officer or employee of the producer or importer, or an administrator, executor, or trustee of a producing estate, and that such person has the authority to take such action.* * *

(c) Each producer or importer shall be entitled to cast only one ballot in the referendum.

33. Section 1207.203 is amended by revising paragraphs (b), (c) (2) and (3), adding a new paragraph (c)(4), and revising paragraphs (e) and (f) to read as follows:

§ 1207.203 Instructions.

* * * * *

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) * * *

(2) for producers, the acreage of potatoes produced by the voting producer during the representative period.

(3) for producers, the total volume in hundredweight of potatoes produced during the representative period, and

(4) for importers, the total quantity of potatoes or equivalent potato products imported during the representative period.

* * * * *

(e) Make available to producers and importers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of a plan, a summary of the terms and conditions of the Plan, *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer and importer whose name and address is known to the referendum agent.

* * * * *

34. Section 1207.204 is amended by revising paragraph (c) to read as follows:

§ 1207.204 Subagents.

* * * * *

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

* * * * *

Dated: June 13, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-14613 Filed 6-20-91; 8:45 am]

BILLING CODE 3410-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3967-3]

Alternative Emission Control Plan for Dow Chemical, U.S.A., Louisiana Division, Plaquemine, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of the Dow Chemical, U.S.A., Plaquemine Plant Alternative Emission Reduction (bubble) request as a revision to the Louisiana State Implementation Plan (SIP). The bubble uses credit from a process change at its Glycol II expander unit which reduced emissions of waste volatile organic compounds (VOCs), in lieu of placing controls on four VOC storage tanks. The emission reduction credit (ERC) was determined to be valid for trading purposes as evaluated for consistency with EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986 (51 FR 43814).

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides and Toxics Division, Region 6, U.S. EPA, at the address below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Louisiana Department of Environmental Quality, Office of Air Quality, P.O. Box 44096, 625 North 4th Street, Baton Rough, Louisiana 70804.

U.S. Environmental Protection Agency—Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 1200, Dallas, Texas 75202-2733.

The interested person wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before arrival.

FOR FURTHER INFORMATION CONTACT: Bill Nally, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides and Toxics Division, Region 6, U.S. EPA, at 214-655-7214 (FTS 255-7214).

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an alternative emission reduction plan for the Dow Chemical, U.S.A., facility located at Plaquemine, Iberville Parish. The submittal contains verification that adequate notice and a public hearing were provided for the alternate emission reduction plan. EPA proposes to approve the SIP revision and invites comments from all interested persons. Comments received at the EPA Region 6 address listed above within 30 days of the publication of this notice will be considered by EPA.

In June 1977, Dow instituted a process improvement at its Glycol II Expander unit that reduced emissions from a waste gas vent from 595.7 tons per year (TPY) of VOCs to 140.6 TPY of VOCs. The emissions listed above are the actual emissions (after the VOCs flow through the incineration unit). Dow has proposed to use credit from the emission reduction at this waste gas vent as a substitute for installing controls on four VOC storage tanks. Two of the tanks are fixed roof tanks containing methanol. Emissions from these two tanks are 5.72 and 1.35 TPY. Two other tanks contain an impure mixture of hexane and other VOCs. Only one of the hexane tanks is operating at any one time, while the other is idle. The company did actual field testing of the two hexane tanks and found their emissions to be 28.00 and 6.57 TPY of VOC. EPA calculated the emissions from the hexane tanks and determined theoretical total loss for one tank to be 16.9 TPY and found the standing storage loss from the other to be 2.76 TPY. The higher, actual values, rather than the theoretical values, are used in the trade. Total allowable emissions from the four tanks with external floating roof tanks and rim mounted secondary seals are 0.45 TPY. Louisiana Air Qualify Regulation (LAQR) 22.8(a), requiring incineration as an equipment standard for waste gas vents containing nonhalogenated compounds, was approved on February 14, 1980 (45 FR 9903). LAQR 22.8(b), a regulation proposing controls for waste gas vents containing halogenated hydrocarbons, has not yet been acted on by EPA.

The credits the company is claiming result from a process change whereby Dow added an additional reactor before the incinerator to the process and thereby reduced the amount of VOCs going to the control device. This consequently resulted in a reduction in emissions from the control device. After using the necessary 41.19 TPY of ERC, and allowing for a 5.7 TPY net air quality benefit, Dow would have 408.2 TPY of ERC remaining. The entire trade as proposed is summarized in the table below.

ERC from reduction of vent emissions (−455.1 TPY)	Emissions from four VOC storage tanks (+41.19 TPY)	Net air quality benefit (+5.7 TPY)

REMAINING ERC (−408.2 TPY)

[Emissions (tons/year)]

Sources	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Storage Tanks	5.72	5.72	0	.16	5.72	5.56
	1.35	1.35	0	.03	1.35	1.32
	28.00	28.00	0	.14	28.00	27.86
	6.57	6.57	0	.12	6.57	6.45
Waste Gas Vents	595.7	140.6	−455.1	595.7	140.6	−455.10
Air Quality Benefit	0	0	0	0	5.7	5.7
Total	637.4	182.24	−455.1	596.15	187.94	−408.2

This emissions table reflects calculations that have had the ethane component removed from the Dow calculations because ethane is not treated as a VOC in accordance with EPA policy.

The current air quality is designated nonattainment of National Ambient Air Quality Standards (NAAQS) for ozone. The last eight years of data for Iberville Parish are summarized below.

Year	NAAQS (parts per million, PPM)	Highest violation (PPM)	No. of violations for that year
1983	.12	.188	4
1984	.12	.129	1
1985	.12	.129	2
1986	.12	.133	3
1987	.12	.134	2
1988	.12	.148	3
1989	.12	.149	5
1990	.12	.157	5

On May 26, 1988, EPA sent a letter to the Governor of Louisiana identifying areas in Louisiana that would receive a post-87 SIP call.

According to EPA's proposed post-87 policy, the SIP planning area has been expanded to the entire Metropolitan Statistical Area (MSA) and adjacent Parishes with monitored or modeled nonattainment. Therefore, Iberville Parish was included in the SIP call for Baton Rouge, Louisiana.

Review

The bubble was reviewed for compliance with the requirements of section 110 of the Clean Air Act, 40 CFR part 51, EPA's proposed ETPS of April 7, 1982 [47 FR 15076], and the final ETPS of December 4, 1986 [51 FR 43814]. EPA has reviewed the State submittal and developed an Evaluation Report.[1] This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. The review is summarized below.

The final ETPS sets out current EPA policy for approving bubbles. EPA policy differs depending on whether the bubble is in a nonattainment area with an approved attainment demonstration (NAWAD) or a nonattainment area lacking an approved attainment demonstration (NALAD).

A bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS [51 FR 43838 column 3].

A bubble in a NALAD is approvable only if it meets the following three requirements:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT [2]-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(iii) The State must provide assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The final ETPS sets out five representations that the State must make [51 FR 43839–40].

EPA believes that these NALAD requirements are necessary to ensure that the bubble will not interfere with attainment as expeditiously as practicable, as required under 42 U.S.C. 7410 and 7502.

However, the final ETPS relaxes these NALAD requirements for pending bubbles. A pending bubble is defined as a bubble submitted by the State to EPA before EPA published the final ETPS [51 FR 43840 column 1]. The rules for a pending bubble in a NALAD are as follows:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce some reduction—but need not produce a 20% reduction—in the emissions remaining after application of the baseline specified above.

Grandfathering Principles

Because the final ETPS is a policy statement, it does not set out requirements that apply with equal force in all circumstances. Beyond this, the actions proposed in today's notice are consistent with the principles of grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former policy to certain actions pending before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new rule represents an abrupt departure from well-established practice, (ii) affected parties have relied

[1] Evaluation Report for the Alternative Emission Control Plan for Dow Chemical U.S.A., Louisiana Division, Plaquemine Plant, June 1990.

[2] RACT refers to Reasonably Available Control Technology.

on the old rule, (iii) the new rule imposes a large burden on those affected, and (iv) there is no strong statutory interest in applying the new rule generally (*Sierra Club* v. *EPA*, 719 F.2d 436 [D.C. Cir. 1982]. *cert. den.* 468 U.S. 1204 [1984]).

Proposed Ozone Strategy and SIP Calls

By notice dated November 24, 1987 [52 FR 45044], EPA published a proposed policy (Proposed Ozone Strategy) to address the fact that many areas in the country were not expected to attain the NAAQS for ozone (and carbon monoxide) by the end of 1987—the latest date for attainment expressly identified in the Clean Air Act (42 U.S.C. 7502). In general, EPA stated that in the spring of 1988, it would issue SIP calls to areas where, based on recent monitoring data, EPA determined that the SIPs were substantially inadequate to attain the NAAQS. The issuance of SIP calls would trigger a new round of SIP development by the states.

EPA proposed to require that the states that receive SIP calls develop revised inventories within one year of the SIP call, and develop and submit for EPA approval new SIPs within two years of the SIP call. EPA further proposed to require that, in general, the new SIPs must persuasively demonstrate attainment of the NAAQS within five years of the SIP call (in order to avoid construction ban penalties). EPA further proposed to require that, in general, the State demonstrate that the SIP would produce expeditious progress in the interim before attainment. This reasonable rate of progress would be an average annual emissions reduction of at least three percent in the base year inventory for the area [see 52 FR 45045].

On May 26, 1988, EPA issued SIP calls with respect to many areas of the country, including the areas to which this notice applies. The SIP calls trigger a two-step planning process that ultimately should result in the creation of SIP revisions that will produce near term attainment of the standards.

Application to Dow

The State submitted this bubble to EPA before EPA published the final ETPS on December 4, 1986. Thus, EPA considers this a pending bubble under the final ETPS. At the time the State submitted this bubble, the area was classified as a NAWAD for purposes of applying the final ETPS. As noted above, under the final ETPS, a bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. This bubble meets these requirements.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. First, Dow has shown in this submittal that they added an additional reactor (final reactor) between the tertiary reactors and the control device. This process change involving the installation of this additional reactor results in greater conversion of VOCs, thereby reducing the VOC emissions to the control device and reducing final emissions of VOCs. RACT is determined in this case by the regulation approved by the State in 1980 which requires incineration (control device). The control device was already installed when the process improvement was made in June of 1977. The baseline is the level of pollutant output below which a source must reduce its emissions in order to qualify for an emissions reduction. EPA interprets baseline as an emission rate. RACT, in this case, is the piece of process control equipment and the baseline is the actual rate of emissions coming from that piece of process control equipment. Dow was meeting RACT both before and after the process improvement, but did experience a reduction of emissions with the addition of the final reactor. RACT and baseline can be, and in this case are, independent variables. Dow did not go beyond the requirement to have an incinerator in place, but it did voluntarily decrease emissions by reducing the flowrate of VOCs into the incinerator which resulted in fewer emissions out of the incinerator. As an example, if an incinerator is ninety-five percent efficient and it is receiving 10,000 tons of waste gas per year, then it will release 500 tons of uncombusted waste gas per year. But if that same incinerator only receives 2,000 tons of waste gas per year, then it will only release 100 tons of uncombusted waste gas per year. In this example, the benefit to the environment is that 400 fewer tons of uncombusted waste gas per year are being released to the atmosphere. (Example from the Vista bubble, 55 FR 3596.) By changing the VOC input to the incinerator, Dow reduced the amount of waste gas created in the reaction. The ERC is a result of the process change. Therefore, the emission reductions are surplus.

Second, the emissions reductions will need to be made enforceable at the State level. The emission limits were originally included in permit No. 1838T issued March 31, 1983. It is necessary that the Louisiana Department of Environmental Quality (LDEQ) revise the permit to be accurate and enforceable in accordance with the current situation as depicted in the emission table given earlier in this notice. The State should model the permit after the Vulcan and American Cyanamid permits issued for the final approval of these bubbles.

Third, the emission reductions are permanent in that they are a permanent process change and would need to be a part of the plant permit. Any change in the process that would increase emissions would have to be re-permitted and would then be subject to Federal review to enforce conditions of this bubble.

Fourth, calculations quantifying all of the emissions involved in the trade were submitted to EPA. EPA has reviewed all of the calculations and found they are acceptable according to EPA criteria.

While EPA was considering this bubble, it received additional information that the SIP for the Baton Rouge MSA does not in fact provide for attainment by the end of 1987. In the November 24, 1987, **Federal Register** notice describing EPA's proposed policy for areas that are not expected to attain by the end of 1987, EPA stated that a SIP call would likely be issued for this area [52 FR 45100–3]. On May 26, 1988, EPA issued the SIP call for this area.

A SIP call is a finding by EPA under Clean Air Act 110(a)(2)(H) that the SIP is substantially inadequate to achieve the NAAQS, and amounts to a provisional finding that the area receiving the call is, for the purposes of the general applicability of the final ETPS, a NALAD.

The pending bubble requirements of the final ETPS contemplate a bubble submitted by the State before publication of the final ETPS, at a time when the area is a NALAD, with no EPA action on the bubble by the date of publication of the final ETPS. These pending bubble requirements do not explicitly contemplate the circumstances here, in which the bubble was submitted by the State before publication of the final ETPS, at a time when the area was NAWAD, but the areas subsequently received a SIP call that converted it to NALAD before EPA acted on the bubble.

EPA has determined that different policy elements would apply to this pending bubble. EPA does not believe that the bubble should be required to use a trading baseline of the lower of actual, SIP-allowable, or RACT-allowable emissions. Rather, the bubble may continue to use the baseline that is consistent with the assumptions in the applicable attainment demonstration.

Nor is the bubble required to show any reduction in emissions beyond the baseline.

However, EPA does believe that for these bubbles, the State should provide certain State assurances. Specifically, the State must make the following representations to EPA:

(i) The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

(ii) The State or local agency's ability to obtain any additional emission reductions needed to expeditiously attain the maintain ambient air quality standards is not compromised and the source may be revisited for additional emission reductions.

(iii) The State or local agency is making reasonable efforts to develop a complete approvable SIP and provides EPA a schedule for such development (including dates for completion of emissions inventory and subsequent increments of progress).

EPA believes that if the State adequately makes these representations, EPA will be able to approve this bubble on grounds that it does not interfere with attainment and maintenance of the ozone NAAQS, in accordance with Clean Air Act section 110(a)(2). EPA believes that applying the policy elements described above would be consistent with the fact that the final ETPS is a policy statement whose tests may not apply with equal force in all circumstances. Moreover, although grandfathering principles under the case law described above do not literally apply in the case of this bubble because EPA has not issued any new rule, EPA believes that these principles provide a helpful analogy because of the changed circumstances—conversion from NAWAD to NALAD—these areas found themselves in while EPA was considering the bubble application.

Specifically, EPA believes it appropriate to exempt this bubble from using a lower of actual-or-allowable baseline, or providing 20% progress beyond baseline emissions, on equitable grounds; the State and the source had submitted the bubble several years ago, and had relied on the area's classification as a NAWAD in submitting the bubble. Subjecting the bubble to the stricter baseline requirements and the progress requirements would be a significant burden because the bubble would likely require significant restructuring to be approvable, which would require the State to undergo its rulemaking process again.

EPA further believes, however, that State assurances of the type described above are necessary. These assurances would protect the requirement of noninterference with attainment because the ongoing state planning process can be expected to result in a SIP that will provide attainment.

The final policy at 51 FR 43840 under the "Treatment of Pending Bubble Applications" notes the following guidance for rural ozone nonattainment areas: "In other areas these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval." The 1982 policy states at 47 FR 15077: "In nonattainment areas with approved demonstrations of attainment, the baseline must be consistent with assumptions used to develop the area's SIP. Only reductions not assumed in the area's demonstration of reasonable further progress and attainment can be considered surplus. This generally means that actual emissions must be the baseline where actual emissions were used for such demonstrations, and that allowable emissions may be the baseline where allowable emissions were used for such demonstrations." The question now arises whether Dow conformed to these requirements. Before EPA takes final action on this bubbie, the State must make the following commitments to EPA: (i) That the State will document that it did not rely on any emissions reductions from Dow in developing its SIP for the area. This means that the State developed its SIP based on the full 595.7 TPY being emitted to the atmosphere on a continuous basis and worked on reductions elsewhere. This also means that allowable emissions (in this case the 595.7 TPY) may be used as the baseline; (ii) that the 408.2 TPY which was designated for the bank will be voided and that no credit beyond that needed for the four uncontrolled tanks will be used. This would benefit the environment; (iii) that the State will submit an enforceable permit to reflect the circumstances of this bubble proposal in accordance with the emissions table of this notice. The permit will be modeled after the Vulcan and American Cyanamid permits issued for the final approval of these bubbles; (iv) that the State is addressing the post–87 SIP call; (v) that the State will submit a plan to demonstrate attainment; and (vi) that the State will commit that it has the resources to fulfill the requirements of numbers (iv) and (v) above.

The State has already agreed to do the following:

(i) Submit revisions involving the trade to the existing permit to improve its enforceability.

(ii) Commit that it did not use Dow's credits in the State's SIP planning.

(iii) Document that the 408.2 TPY designated for the Bank will be voided.

Proposed Action

Today's notice proposes to approve the emissions trade for Dow Chemical, U.S.A. Dow is using a reduction in emissions from a process improvement as a credit to be used toward allowing four storage tanks to remain uncontrolled. The regulations call for the tanks to have a control device. Before the trade is approved, the State must provide assurances that the State:

1. Will submit an enforceable permit to reflect the circumstances of this bubble proposal in accordance with the emissions table of this notice, with the permit being modeled after the Vulcan and American Cyanamid permits issued for the final approval of these bubbles.

2. Did not use the credits from Dow in its former SIP planning, so that the full 595.7 TPY may be used as the baseline.

3. Will void the remaining credits from this trade (408.2 TPY) and that no extra credit beyond what is needed for the four uncontrolled tanks will be used.

4. Is addressing the post–87 SIP call.

5. Will submit a plan to demonstrate attainment.

6. Has the resources to fulfill the requirements of numbers 4. and 5. above.

EPA is providing a thirty-day comment period on this notice of proposed rulemaking. Public comments received on or before July 22, 1991 will be considered in EPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region 6 office listed at the front of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities [see 46 FR 8709].

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on

January 19, 1989 [54 FR 2214–2225]. On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions [54 FR 2222] from the requirements of Section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642.

Dated: June 12, 1991.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 91–14826 Filed 6–20–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 482, and 485

[BPD–646–P]

RIN 0938–AE48

Medicare Program; Conditions of Coverage for Organ Procurement Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth changes to the conditions of coverage for Organ Procurement Organizations (OPOs). It would redefine an OPO service area, revise the qualifications for the Board of Directors, specify the assistance to be provided by an OPO to hospitals in establishing and implementing protocols governing organ procurement activity, require an OPO to establish criteria for allocating organs, and require an OPO to ensure that tests are performed on serum from prospective organ donors to prevent the acquisition of organs that are infected with the etiologic agent for Acquired Immune Deficiency Syndrome. These changes are required by the Health Omnibus Programs Extension Act of 1988 (Pub. L. 100–607) and the Transplant Amendments Act of 1990 (Pub. L. 101–616).

We also would clarify the distinction between certification and designation, and amend the designation and redesignation criteria with respect to compliance with performance standards, change of ownership, and termination procedures. Finally, we solicit comments on criteria that should be used to determine if an OPO's service area is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 20, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–646–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD–646–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890). If comments concern information collection or recordkeeping requirements, please address comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

FOR FURTHER INFORMATION CONTACT: John Powell, (301) 966–9671.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end stage renal disease who require dialysis or kidney transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. Medicare also covers certain other organ transplants that HCFA has determined are "reasonable and necessary" under section 1862 of the Act, and pays for those transplants and related organ procurement services.

Section 1138(b) of the Act, as added by section 9318 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), sets forth the statutory qualifications and requirements an Organ Procurement Organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be reimbursable under the Medicare and Medicaid programs. The corresponding regulations are found at 42 CFR part 485 (Conditions of Participation and Conditions for Coverage: Specialized Providers) under subpart D (Conditions of Coverage: Organ Procurement Organizations).

These regulations were published in the **Federal Register** on March 1, 1988 (53 FR 6550). In general, § 485.303(a) states that payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments to an OPO only if the organization has been designated by the Secretary as meeting the conditions for coverage as an OPO. OPOs are not generally paid directly for organ procurement costs; rather, the transplanting hospital pays those costs to the OPO and claims them on its cost report. However, the OPO does have to file a cost report with HCFA at the end of its fiscal year, at which time HCFA settles with it for any overpayment or under payment it has made *vis-a-vis* hospitals during the cost year. To be designated as an OPO, § 485.303(b) requires that an organization must—

- Apply to HCFA in writing using the application form prescribed by HCFA;
- Meet the qualifications listed at 42 CFR 485.304 (Condition: Qualifications required of an organization for it to be a designated organ procurement organization); and
- As specified in 42 CFR 485.305, be a member of, have executed a written agreement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) established in accordance with section 372 of the Public Health Service Act.

The Health Omnibus Programs Extension Act of 1988 (Pub. L. 100–607) was enacted on November 4, 1988. The Organ Transplant Amendments Act of 1988, title IV of Public Law 100–607, amends section 371 of the Public Health Service Act, which defines OPOs.

Specifically, section 402(c)(1)(A) of Public Law 100–607 amended section 371(b)(1)(E) of the Public Health Service Act. It revised the definition of "service area" that must be encompassed by an entity in order for the entity to be recognized by the Secretary as an OPO. Prior to the enactment of Public Law 100–607, the law provided that, unless the service area comprised an entire State, it had to be of sufficient size to include "at least 50 potential organ donors" each year. Section 402 of Public Law 100–607 revised section 371 of the Public Health Service Act to require the service area to be large enough that the OPO "can reasonably expect to procure organs from not less than 50 donors each year". Under section 371, the Secretary would determine if the OPO can "reasonably expect" to procure organs from not less than 50 donors.

We have determined that this change would have resulted in a substantial number of existing OPOs failing to qualify for redesignation, because we interpret the requirement that the OPO "can reasonably expect [emphasis added] to procure organs from not less than 50 donors" to be more stringent than the current requirement that the service area include "at least 50 potential [emphasis added] organ donors." According to a Departmental study cited in the Report of the Committee on Energy and Commerce on a precursor to the 1988 Public Health Service Act legislation, the Organ Transplant Amendments Act of 1987 (H.R. Rep. No. 383, 100th Cong., 1st Sess. 5–6 (1987)), the average OPO was, at the time of the report, procuring organs from only 44 donors per year. (Because more than one organ may be obtained from a donor, the average number of organs obtained per OPO per year is about 110.)

Most of the currently designated OPOs were scheduled for redesignation beginning in March 1990 and would have been required to meet the new requirement imposed by Public Law 100–607. Contacts with many of the designated OPOs and with representatives of the Association of Organ Procurement Organizations (AOPO) revealed that almost one-half of the OPOs would not have been able to meet the new requirement. It was also the opinion of some organ procurement and transplantation experts that many of the OPOs that would not have a realistic expectation of procuring organs from at least 50 donors were nonetheless effective and efficient entities. The Department and other interested parties sought statutory relief to avoid disruption to the nation's organ procurement system. On April 23, 1990, Public Law 101–274 was passed. It postponed the effective date of the service area organ donor requirement to January 1, 1992. Therefore, the "at least 50 potential donors" requirement would have remained in full force and effect until that date. However, the Transplant Amendments Act of 1990 (Pub. L. 101–616) was enacted on November 16, 1990. That Act amended section 371(b)(1)(E) of the Public Health Service Act to require an OPO to have a "* * * defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area". The Secretary is required under section 201(d)(2) of Public Law 101–616 to publish a proposed definition of "service area" by February 14, 1991, and final regulations defining "service area" by November 16, 1991. As discussed in II. below ("Provisions of the Regulations"), we are soliciting comments on the criteria for identifying a sufficient-sized service area for efficient and effective OPOs. After reviewing public comments, HCFA will decide which criteria to apply and will publish them in final regulations.

All other changes relating to OPOs that are required by Public Law 100–607 would be implemented by these proposed regulations:

- Section 371(b)(1)(G)(i)(III) of the Public Health Service Act was amended to allow either a physician or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility to serve on an OPO's board of directors or advisory board. Prior to the amendment, the statute required that at least one board member have knowledge, experience, or skill in the field of histocompatibility, and that he or she also be a physician.
- Section 371(b)(3)(E), as subsequently amended by section 201(d)(1) of Public Law 101–616, was amended to specify that an OPO is responsible for allocating organs equitably among the patients who need a transplant, in accordance with OPTN criteria. The waiting lists for organs have lengthened and concerns have been raised that OPOs might be in a position to show favoritism to a particular transplant facility. Congress' purpose in adding this amendment was to assure equity in the distribution of organs among patients needing transplants, rather than to focus on distribution of organs to transplant centers. (See page 12 of Senate Committee on Labor and Human Resources Rep. No. 310, 100th Cong., 1st Sess. (1987) and page 6 of H.R. Committee on Energy and Commerce Rep. No. 383, 100th Cong., 1st Sess. (1987).)
- Section 371(b)(3)(C), as subsequently amended by section 201(d)(1) of Public Law 101–616, was amended to require OPOs to ensure that tests are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome, and to assist hospitals to comply with the requirement in section 1138(a) of the Act that hospitals have protocols for making routine inquiries regarding potential donors.

All of these OPO requirements and responsibilities are prerequisites not only for qualifying for grants under section 371 of the Public Health Service Act, but also for designation under section 1138(b) of the Social Security Act.

In addition to the provisions that are necessary to implement these statutes, we are proposing some other amendments to current regulations that are derived from HCFA's experience in administering the OPO program that are not related to either piece of legislation. The most noteworthy of these latter provisions deal with change of ownership and termination. In interpreting current regulations, questions have arisen recently with regard to what standards and procedures are required when two OPOs voluntarily merge or consolidate or when there is a change of ownership or service area. Our current regulations also are silent on conditions for termination, whether the termination is voluntary or involuntary. To address these concerns and to clarify our operational policies with regard to change of ownership and terminations, we are proposing to add two new provisions to the current regulations. Specific provisions of these new sections are discussed in more detail below.

II. Provisions of the Regulations

The proposed regulations would make a technical correction in §§ 405.2163 ("Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.") and 405.2171 ("Condition: Minimal service requirements for a renal transplant center."). In paragraph (f) of the former and paragraph (e) of the latter, we would change the phrase "certified or recertified" to "designated or

redesignated". This change was inadvertently omitted when OPO regulations were published in the Federal Register on March 1, 1988.

These proposed regulations also would implement section 402 of Public Law 100–607 and section 201 of Public Law 101–616 by amending certain sections of part 482, which sets forth the Medicare conditions of participation for hospitals, and subpart D of part 485, which sets forth the Medicare conditions of coverage for OPOs, to conform them to the statute.

We would revise paragraph (c)(5)(ii) of § 482.12 (Condition of participation: Governing body) to state that no hospital will be considered to be out of compliance with section 1138(a)(1)(B) of the Act or with the requirements at § 482.12(c)(5)(ii), unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

We would delete the reference to section 9318 of Public Law 99–509 in the last sentence in § 485.301 ("Basis and scope.") because it is unnecessary.

Section 485.302 ("Definitions.") would be amended to change the definition of "service area" by using the phrase "is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs" as opposed to the current phrase "at least 50 potential organ donors." If our evaluation of the comments reveals it to be necessary, we will publish an amended notice of proposed rulemaking in 1991 to propose more detailed criteria. In any event, we will specify in the final rules criteria HCFA will use to determine the service areas of an OPO. Each OPO will be required to meet the definitions specified in the final rule.

As previously noted, we have determined that application of the 50 donor requirement as set forth in Public Law 100–607 to OPOs coming up for redesignation in 1990 would have resulted in over half of them failing to be redesignated (see Table A).

TABLE A: ACTUAL DONOR RANGE AND FACILITY COMPLIANCE COMPARISON—1989

Number of Donors	Facilities meeting requirement	Facilities failing to meet requirement
50 or more	31	39
40	38	32
30	50	20
25	55	15
20	59	11
15	64	6

In amending this provision and requiring the OPO to have a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, Congress mandated that the Department develop effective criteria for identifying such a service area A number of criteria are being considered. They are described below, and we solicit public comment on them and on any other criteria that might lead to valid identification of a sufficient-sized service area to assure effective OPOs.

Possible criteria to be considered would fall under one of two existing types of requirements: Qualifying criteria and performance standards. Qualifying criteria are used to determine if an OPO should be designated, and performance standards are used to measure the effectiveness of a designated OPO's performance. We also may use qualifying criteria that differentiate between existing and new OPOs. For instance, existing OPOs may be judged on historical yields when determining a realistic expectation of achieving the necessary procurement levels, while new OPOs may be judged by some other proxy measure, such as overall population in the service area.

The qualifying criteria we propose to use may include one or more of the following:

- An area encompassing an entire State or States. For the purposes of implementing this requirement we would not consider an area to encompass an entire State if even one county of the State is included in another OPOs service area. This could occur, for example, in places where a standard metropolitan statistical area (SMSA) overlaps State lines. We would not permit a service area to contain an SMSA which is broken up.
- A population of at least sufficient size so that there would be a reasonable expectation that procurements would be made from at least that number of donors determined to be needed to assure maximum effectiveness in the procurement and equitable distribution of organs. For example, if we determine that an OPO must procure organs from at least 50 donors to meet this requirement, then perhaps a population of at least 2.5 million would be a qualifying criterion. This is based on the assumption that an OPO should be able to procure organs from at least 20 donors per million population. Of course, if this assumption is incorrect, then some other ratio would be needed and another population size would be required to yield at least 50 donors. We request public comment on whether this ratio is appropriate.
- A documented showing (or a realistic expectation) that an OPO's service area has historically yielded at least 50 actual donors per year.
- A realistic expectation of procuring organs from some number of donors other than 50. For example, would an entity be considered capable of operating effectively if it procures organs from less than 24 donors a year? Would staff skills, effective community contact, and economy be maintained if the OPO procures organs from an average of less than two donors a month?

The performance standards we propose to use may include one or more of the following:

- The performance standards currently at § 485.306(a) (1) and (2). They state that each OPO must—

+ Procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12 month period surveyed;
+ Provide a minimum ratio of cadaveric kidneys procured in its service area and transplanted (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

- Performance standards for the procurement of hearts and livers. We solicit comments on appropriate performance standards for the procurement of these organs.
- The cost per organ procured. Since there is a long history or acquisition costs for kidneys, a likelihood that all designated OPOs would retrieve kidneys, and, we believe, greater standardization in determining which components of cost should be included, we propose to use cost per kidney procured as a yardstick for determining if an OPO is effectively procuring organs. We would compare costs against a national or regional measurement. Those OPOs that showed unexplaind high costs (for example, greater than 10 percent above the national or regional measurement) per kidney would be reviewed closely and possibly considered for termination, depending upon the apparent reasons for the high cost. One such reason could be that the size or character of the service area is such that the OPO could not function effectively or equitably. A similar standard will be developed for hearts and livers, and appropriate measures will be incorporated.
- The use of a formula to calculate the expected number of donors per year for each OPO. It would be based on

population, size, and composition (see Table B). The number of projected donors per year would be calculated and listed for each designated OPO, along with a frequency distribution showing by what percentage each OPO was above or below its projected number. All OPOs meeting or exceeding their projected number of donors would be considered to be in compliance. OPOs at a certain level (for example, more than 10 percent) below the projected total, without a reasonable explanation, would be considered to be out of compliance with this performance requirement. Acceptable rationale for failure to achieve the minimum number of donors could include a lack of cooperation by certain health professionals in key donor hospitals, unexpected loss of transplant coordinators, and a high prevalence of Human Immunodeficiency Virus infection in the service area population. HCFA would consider these and similar factors in deciding whether the OPO merits continued designation.

Table B.—Expected Number of Organ Donors for Individual OPOs Based on National Rates of Organ Donors per Million Population and the Population Composition of Individual OPOs

1. No. U.S. donors for each age, race/ethnicity, and gender category/U.S. population for each age, race/ethnicity, and gender category × 1,000,00 = U.S. donors per million population by age, race/ethnicity, and gender category.....
2. U.S. donors per million population for each age, race/ethnicity, & gender category/1,000,000 × individual OPO population for each age, race/ethnicity, and gender category = expected individual OPO donors for each age, race/ethnicity, and gender cateogy.....
3. Add the expected individual OPO donors for each age, race/ethnicity, and gender categories obtained in No. 2 above to get the total number of expected donors for an individual OPO.....

• AOPO has forwarded a recommendation for a performance standard based on population and potential activity benchmarks.

The Association recommends that an OPO be required to demonstrate that it achieves at least 75 percent of the national means for per capita organ recovery in four of the following performance categories over the previous two calendar year period. The national means would be derived from the experience of designated OPOs in these categories:

—Actual donors per million population.
—Number of kidneys recovered per million population.
—Number of kidneys transplanted per million population.
—Extrarenal organs recovered per million population.
—Actual number of extrarenal organs transplanted per million population.

Under this performance standard, failure to achieve 75 percent of the national means in four of the five categories would require an investigation to determine why the OPO did not achieve minimum goals. If an investigation determines that the OPO's inefficiency, poor management, or like reasons are the major cause of the low performance, then termination action would be initiated.

• Since organ donation is a function of trauma patterns and where patients die, it has been suggested that these facets be included in measuring an OPO's effectiveness. Therefore, we would propose to look at the ratio or organ donors to the number of hospital deaths of individuals under age 70. These statistics would be gathered at hospitals where an OPO has an agreement. Primarily, but not exclusively, this would be at hospitals in the designated OPO's service area.

Section 485.302 would be expanded to include the following definitions:

• "Certification" or "recertification" denotes that an OPO is recommended by the HCFA Regional Office to the Administrator for designation because the OPO has been found by the Regional Office to meet the standards for a "qualified OPO" under section 371(b) of the Public Health Service Act, as well as the additional conditions for designation in subparagraphs (B)–(E) of section 1138(b)(1). Section 1138(b)(1)(A) requires that recertification must be completed at least every two years and must be completed prior to the end of the 2-year designation period. No payment ensues from certification alone.

• "Designation" or "redesignation" signifies HCFA has selected an entity to be the OPO for a particular service area for Medicare and Medicaid payment purposes.

• "Interim redesignation period" means a period of time, not to exceed 60 days, after the designation period has expired and during which an OPO is temporarily recertifed and redesignated by HCFA after an interim determination is made that the OPO is in compliance with the requirements of section 371(b) of the Public Health Service Act and other statutory requirements contained in section 1138(b) of the Act. The interim determination is made prior to the expiration of the designation or redesignation period. The interim redesignation period is available only when additional time is needed by HCFA for more comprehensive review.

• "Open area" means a service area for which HCFA is accepting applications for designation via public notification. A service area becomes open for competition once the normal two-year designation period or brief interim redesignation period has expired, or the designated status of the existing OPO is terminated, or when no OPO previously has been designated for such area. HCFA may also declare the service area open in the event an OPO ceases to operate or HCFA has reasonable ground for anticipating it will cease to operate. In cases of urgent need (such as medically unsound practices being discovered), HCFA may terminate an OPO immediately. The service area remains open until an OPO is designated for it.

Paragraph (c) of § 485.303 ("Condition: Organ procurement organization qualifications—General.") would be amended to state that an initial designation means that an OPO is designated for two years (the normal designation period) and is not required to demonstrate compliance with the performance standards in § 485.306(a)(1) and (2) as a condition for designation or as a condition for continuing designated status during that period. However, it must meet and continue to meet the requirements contained in § 485.304 ("Condition: Qualifications required of an organization for it to be a designated organ procurement organization."), § 485.305 ("Condition: Organ Procurement and Transplantation Network participation."), and paragraph (a)(3) of § 485.306 ("Condition: Performance standards for organ procurement organizations."), which requires an OPO to enter into a working relationship with any hospital or transplant center in the OPO's service area that request a working relationship. HCFA will consider applications from all entities which apply to be the designated OPO for an area that has been declared to be an open area. It would also state that HCFA may redesignate an organization for an interim redesignation period (either the previously designated OPO or another organization) if the extension is needed to permit HCFA sufficient time to conduct a more comprehensive review.

Paragraph (d) of § 485.303 would state that to be redesignated, an OPO must comply with all the requirements in subpart D, including those at § 485.306.

Paragraph (e) of § 485.303 would state that an OPO must obtain HCFA approval before entering into any change of ownership, assignment, merger, or consolidation. Failure to do so could result in termination.

Paragraph (f) of § 485.303 would set forth the specific terms of the OPO's agreement with HCFA. The agreement becomes effective upon submission by the OPO and acceptance for filing by HCFA, but may be terminated by either party. If an OPO is terminated, payment for organ procurement costs attributable to it will not be reimbursed by Medicare or Medicaid effective for services furnished on or after the effective date of termination. In the agreement, the OPO agrees to:

- Maintain compliance with the requirements of titles XVIII and XIX of the Act, section 1138 of the Act, and applicable regulations, including the conditions set forth in subpart D, part 485, and the rules and requirements of the OPTN approved and issued by the Secretary, and to report promptly to the Secretary any failure to do so;
- File a cost report in accordance with § 413.24(f) within three months after the end of each fiscal year;
- Permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO and to make a determination of reasonable cost based on the cost report it files;
- Provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;
- Pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO;
- Not charge an individual for items or services for which that individual is entitled to have payment made under section 1881 of the Act;
- Maintain and make available to the HCFA, the Comptroller General, or their designees data that show the number of organs procured and transplanted; and
- Maintain data in a format that can be readily assumed by a successor OPO and turn over to HCFA copies of all records, data, and software necessary to assure uninterrupted service by a successor OPO that is newly designated. Records and data subject to this requirement include records on individual donors (both identifying data and data on organs retrieved), records on transplant candidates (both identifying data and data on immune system and other medical indications), and procedural manuals and other materials used in conducting OPO operations. Donor records must include at least information identifying the donor (for example, name, address, date of birth, Social Security number, etc.), the organs and tissues retrieved, date of the organ retrieval, and test results.

These requirements are part of the application process and we are adding them as a new section to codify them in regulations. Section 485.304 sets forth the qualifications required of an organization for it to be a designated OPO. Paragraph (d) of § 485.304 would require an OPO's service area to be of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs (as determined by HCFA), and that either includes an entire metropolitan area (as specified by the Director of the Office of Management and Budget) or does not include any part of such an area.

Section 485.304(f)(3) would be amended to allow either a physician or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility to serve on an OPO board of directors or an on advisory board. The current § 485.304(f)(3) requires that the individual be a physician.

Section 485.304(i) would be revised to require an OPO to have a system to allocate donated organs equitably among transplant patients consistent with OPTN criteria as approved by the Secretary. The current text does not include the word "equitably."

A new paragraph (q) would be added to § 485.304. It would require OPOs to assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors. According to existing Federal regulations (§ 482.12 "Condition of participation: Governing body."), hospitals are already required to refer all potential organ donors to an OPO.

A new paragraph (r) would be added to § 485.304 to require OPOs to assure that appropriate tests, consistent with OPTN standards and CDC guidelines, are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome.

The amendments to section 485.304(f), (i), (q) and (r) are all conforming changes to implement Public Law 101–607.

Section 485.304 would be revised to specify that the term "rules and requirements of the OPTN" means those rules and requirements that the Secretary has issued and published.

Paragraph (a) of § 485.306 ("Condition: Performance standards for organ procurement organizations.") would be revised to state that HCFA will not "redesignate" (it currently reads "recertify") any OPO that fails to meet the performance standards contained in the section. As previously explained by the new definitions added to § 485.302, certifications and recertifications are merely recommendations that HCFA approve an OPO because it is in compliance with the Medicare conditions for coverage. HCFA approval of an OPO for a particular service area for payment purposes is accomplished by either designation or redesignation.

Section 485.306(b) would be amended to set forth language that makes a distinction between an OPO which has not previously been designated by HCFA for a particular service area and a redesignated OPO with respect to the exemption from meeting the performance standards in § 485.306(a)(1) and (2) for the first two years.

Section 485.307 ("Failure to meet requirements ") would be revised and restructured. It would continue to state that a newly designated OPO is exempt from meeting the performance standards at § 485.306(a)(1) and (2) for two years. We would delete the statement in the current § 485.307 that an OPO whose payment is suspended or whose agreement is terminated may appeal the action. The appeal right for termination actions would be included in the new § 485.311(c). HCFA would not redesignate the OPO at the end of the initial two-year designated period unless the OPO meets those standards.

The section heading of § 485.308 ("Designation of one OPO for each service area.") would be revised to read "OPO service area requirements", and paragraph (a) would be amended to clarify that an entity may apply for designated status only when the service area is open, as described in § 485.302.

A new § 485.309 ("Changes in ownership or service area.") would be added. It would explain the term "change of ownership" in terms of changes in partnership, transfer of an unincorporated proprietorship, merger, consolidation, and assignment. A designated OPO must notify HCFA before it effects a change in ownership. This notification is required to assure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. We propose that a change of ownership takes place if any of the following occurs:

- If, in the case of a partnership, one or more partners are gained, lost, or substituted.

• If, in an unincorporated sole proprietorship, title and property is transferred to another party.

• The merger of one entity into another or the consolidation of one entity with another.

Paragraph (b) of § 485.309 would state that if HCFA approval of a change in ownership is not obtained, the OPO agreement may be terminated and would result in HCFA's declaring that service area to be an open area. This approval is required to assure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. The period of designation for the newly reorganized designated OPO would be the remaining designation term of the OPO that was reorganized. If more than one designated OPO is involved in the reorganization, the remaining designation term would ordinarily be the longest of the remaining terms. HCFA may, however, establish a shorter remaining designation period. The performance standards of § 485.306 will apply at the end of this remaining period. HCFA determines whether to approve a change of ownership on a case-by-case basis. When two or more designated OPOs receive HCFA approval to merge or consolidate, HCFA will ordinarily not declare an open area. However, in such cases, the entities involved in this type of organizational change must submit anew the information required in an application for designation, or other such written documentation as HCFA may determine necessary for designation purposes.

A new § 485.311 would be added to set forth conditions for termination. Paragraph (a) would set forth the following types of terminations:

• Voluntary termination. If an OPO wishes to terminate its agreement, it must send written notice of its intention with the proposed effective date to HCFA. HCFA may approve the proposed date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed date if it determines that it would not—

—Disrupt services to the service area; or
—Otherwise interfere with the effective and efficient administration of the Medicare and Medicaid programs.

If HCFA determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services will be deemed to constitute a voluntary termination by the OPO, effective on a date determined by HCFA.

• Involuntary termination. HCFA may terminate an agreement if it determines that the OPO no longer meets the conditions for coverage at part 485 (Conditions of Participation and Conditions for Coverage: Specialized Providers) under subpart D (Conditions of Coverage: Organ Procurement Organizations), or is not in substantial compliance with any other applicable Federal statutes or regulations. HCFA may also terminate an OPO immediately in cases of urgent need, such as the discovery of unsound medical practices.

Paragraphs (b) and (c) of the proposed § 485.311 would state that HCFA gives notice of termination to an OPO at least 15 days before the effective date stated in the notice, and that the OPO may appeal its termination in accordance with the provisions set forth in part 498 ("Appeals Procedures for Determinations that Affect Participation in the Medicare Program").

Paragraph (d) of § 485.311 would set forth the effects of termination:

• Payments are not made for OPO services furnished on or after the effective date of termination.

• HCFA will accept applications from any entity to be the designated OPO for that area.

Paragraph (e) of § 485.311 would state that, in the case of voluntary termination, the OPO must give prompt public notice of the date of termination, and such information regarding the effect of that termination as HCFA may require, through publication in local newspapers in the service area. In the case of involuntary termination, HCFA gives notice of the date of termination.

Paragraph (f) of § 485.311 would state that HCFA may, at its discretion, reinstate a terminated OPO if it finds that the cause for termination has been removed, is satisfied that it is not likely to recur, and has not designated another OPO for the service area. We specifically invite comment on whether we should provide in the rule a minimum period of time before reinstatement occurs, and if so, what a reasonable amount of time should be.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all organ procurement organizations are considered as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Public Law 101–274 amends the Health Omnibus Programs Extension Act of 1988 (Public Law 100–607), to postpone the effective date of the requirement that an OPOs service area can reasonably be expected to yield not fewer than 50 potential donors each year in order to qualify for payments under section 1138(b) of the Act until January 1, 1992.

Most participating OPOs were scheduled to be redesignated beginning in March 1990. The Department of Health and Human Services would have been required to determine if these OPOs met the requirements imposed by Public Law 100–607 in order for them to continue to participate in the Medicare and Medicaid programs. As previously mentioned in the preamble, a Departmental study cited in the committee report (H.R. Rep. No. 383, 100th Cong., 1st Sess. (1987)) indicated that the average OPO is currently procuring organs from only 44 donors per year.

According to another committee report (H.R. Rep. No. 101–447, 101th Cong., 2nd Sess. (1990)), the Committee was advised by HCFA that over one-half of the existing OPOs scheduled for redesignation on March 1990 did not procure organs from 50 donors during 1989, (see Table A in the preamble), and many of these organizations were in jeopardy of not being redesignated. An abrupt change in organ procurement of this magnitude could have seriously disrupted the organ transplant program and would have a harmful effect on

those needy patients awaiting transplants. OPOs challenged that the 50 donor requirement was not a valid measure of their effectiveness. Subsequently, the Transplant Amendments Act of 1990, Public Law 101–616, enacted November 16, 1990, amended section 371(b)(1)(E) of the Public Health Service Act to require that a qualified OPO have a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as defined by the Director of the Office of Management and Budget) or does not include any part of the area. We are soliciting comments to determine what criteria, (refer to the criteria being considered in Part II of the preamble), would be better measures to determine OPOs efficiency and effectiveness. After review and analysis of the comments received on this proposed rule, the specific criteria to be utilized will be published in final regulations.

We expect that the implementation of the other provisions of this proposed rule may cause some OPOs to accrue some additional costs; however, we believe that the costs are minimal compared to the improvement these provisions would have on the quality of health care for organ recipients. We have determined that the provisions of this proposed rule would not meet the $100 million criteria nor would it meet any of the other criteria of E.O. 12291; therefore, this is not a major rule and an impact analysis under E.O. 12291 is not required. We have also determined and the Secretary certifies that this proposed rule would not have a significant effect on a substantial number of small entities and OPOs (independent and hospital-based) are not considered small rural hospitals since they service large geographical areas. Thus, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

IV. Information Collection Requirements

Proposed regulations at § 485.304 contain information collection and recordkeeping requirements that are subject to review by the Office of Management and budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern quantifiable data for submission to HCFA that documents an OPO's statement that its service area is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of such an area. Public reporting burden for this collection of information is estimated to be (estimate to be provided by OCEP) hours per submission. A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart U, is amended as set forth below:

Subpart U—Conditions for Coverage of Supplies of End-Stage Renal Disease (ESRD) Services

1. The authority citation for subpart U, part 405 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. In § 405.2163, the introductory text is republished and paragraph (f) is revised as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

The facility must provide dialysis services, as well as adequate laboratory, social, and dietetic services to meet the needs of the ESRD patient.

* * * * *

(f) *Standard: Participation in recipient registry.* The dialysis facility or center participates in a patient registry program with an OPO designated or redesignated under Part 485, Subpart D of this chapter for patients who are awaiting cadaveric donor transplantation.

3. In §405.2171, the introductory text is republished and paragraph (e) is revised as follows:

§ 405.2171 Condition: Minimal service requirements for a renal transplant center.

Kidney transplantation is furnished directly by a hospital which is participating as a provider of services in the Medicare program and is approved by the Secretary as a Renal Transplantation Center. The Renal Transplantation Center is under the overall direction of a hospital administrator and medical staff; if operated by an organizational subsidiary, it is under the direction of an administrator and medical staff member (or committee) who are directly responsible to the hospital administrator and medical staff, respectively. Patients are accepted for transplantation only on the order of a physician and their care continues under the supervision of a physician.

* * * * *

(e) *Standard:* Organ procurement. A renal transplant center utilizing the services of an organ procurement organization designated or redesignated under Part 485, Subpart D of this chapter to obtain donor organs has a written agreement covering these services. The renal transplant center agrees to notify the Secretary in writing within 30 days of the termination of such arrangements.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

B. Part 482, subpart B, is amended as set forth below:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f (a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z),

and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a (a)(30), and 1396(a)).

Subpart B—Administration

2. In § 482.12, the introductory text for the section and paragraph (c) introductory text are republished, and paragraph (c)(5)(ii) is revised as follows:

§ 482.12 Condition of participation: Governing Body.

The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution. However, if a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this Part that pertain to the governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

* * * * *

(5) * * *

(ii) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation Network (OPTN) established under section 372 of the Public Health Service Act and abide by its rules and requirements. No hospital is considered to be out of compliance with section 1138(a)(1)(B) of the Act or with the requirements in this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS FOR COVERAGE: SPECIALIZED PROVIDERS

C. Part 485, subpart D, is amended as set forth below:

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102, 1138, 1861(aa), and (cc) and 1871 of the Social Security Act; (42 U.S.C. 1302, 1320b–8, 1395x, and 1395hh).

Subpart D—Conditions for Coverage: Organ Procurement Organizations

2. Section 485.301 is revised as follows:

§ 485.301 Basis and scope.

This subpart sets forth the qualifications and requirements an organ procurement organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be reimbursable under Medicare and Medicaid. Its statutory basis is section 1138(b) of the Act.

3. In § 485.302, the introductory text for the section is republished, the definition of "service area" is revised, and three new definitions are added in alphabetical order as follows:

§ 485.302 Definitions.

As used in this subpart, the following definitions apply:

Certification or *recertification* denotes that an OPO is recommended by the HCFA Regional Office to the Secretary for designation because the OPO has been found by the Regional Office to meet the standards for a "qualified OPO" under 371(b) of the Public Health Service Act, as well as the additional conditions for designation in subparagraphs (B)–(E) of section 1138(b)(1). For recertification, section 1138(b)(1)(A) requires that HCFA finds that, in the interval since the last certification or recertification, the OPO has continued to meet the standards to be a qualified OPO. Recertification must be completed at least every two years and must be completed prior to the end of the 2-year designation period. No payment ensues from certification alone.

Designation or *redesignation* means HCFA's approval of an OPO for Medicare and Medicaid payment purposes.

* * * * *

Interim redesignation period means a period of time, not to exceed 60 days, after the designation period has expired and during which an OPO is temporarily redesignated by HCFA after an expedited determination is made that the OPO is in compliance with the requirements of section 371(b) of the Public Health Service Act and other statutory requirements contained in section 1138(b)(1) of the Act. The expedited determination is made prior to the expiration of the designation period. The interim redesignation period is available only when additional time is needed by HCFA for a more comprehensive review.

Open area means a service area for which HCFA is accepting applications for designation via public notification. A service area becomes open for competition once the normal two-year designation period or brief interim redesignation period has expired, or the designated status of the existing OPO is termianted, or when no OPO previously has been designated for such area. HCFA may also declare the service area open in the event an OPO ceases to operate or HCFA has reasonable ground for anticipating it will cease to operate. In cases of urgent need (such as medically unsound practices being discovered), HCFA may terminate an OPO immediately. The service area remains open until an OPO is designated for it.

* * * * *

Service area means a geographical area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire standard metropolitan statistical area or does not include any part of such an area.

* * * * *

4. In § 485.303, paragraph (c) is revised and new paragraphs (d), (e), and (f) are added as follows:

§ 485.303 Condition: Organ procurement organization qualifications—General.

* * * * *

(c) Upon its initial designation, and OPO is designated for two years (the normal designation period) and is not required to demonstrate compliance with the standards at § 485.306(a) (1) and (2), which sets forth performance standards for organ procurement organizations, as a condition for designation or as a condition for continuing designated status, during that period. It must, however, meet and continue to meet the standards at § 485.304 concerning qualifications for designation, § 485.305 concerning participation in the Organ Procurement and Transplantation Network, and § 485.306(a)(3) concerning working relationships with hospitals or transplant centers. HCFA will consider applications from all entities which apply to be the designated OPO for an area that has been declared to be an open area. HCFA may redesignate an organization for an interim redesignation period (either the previously designated OPO or another organization) if the extension is needed to permit HCFA to have sufficient time to make a determination. An organization designated for an interim period must meet all requirements of section 371(b) of the Public Health Service Act and must not be out of compliance with any other requirements of section 1138(b).

(d) To be redesignated, an OPO must comply with all the requirements of this subpart, including those at § 485.306, which sets forth performance standards for organ procurement organizations.

(e) An OPO must obtain HCFA approval before entering into any change of ownership, assignment, merger, consolidation, or change in its

service area (see § 485.309 which sets forth requirements concerning approval for changes in ownership and service area.) Failure to do so could result in termination.

(f) An OPO must enter into an agreement with HCFA. The agreement becomes effective upon submission by the OPO and acceptance by HCFA, but may be terminated by either party. If an OPO is terminated, payment will not be made for services furnished on or after the effective date of termination. In the agreement, the OPO must agree to:

(1) Maintain compliance with the requirements of titles XVIII and XIX of the Act, section 1138 of the Act, and applicable regulations, including the conditions set forth in subpart D, part 485, and the rules and requirements of the OPTN approved and issued by the Secretary, and to report promptly to the Secretary any failure to do so;

(2) File a cost report in accordance wtih § 413.24(f) of this chapter within three months after the end of each fiscal year;

(3) Permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO and to make a determination of reasonable cost based on the cost report it files;

(4) Provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;

(5) Pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO;

(6) Not charge an individual for items or services for which that individual is entitled to have payment made under section 1881 of the Act;

(7) Maintain and make available to HCFA, the Comptroller General, or their designees data that show the number of organs procured and transplanted; and

(8) Maintain data in a format that can be readily assumed by a successor OPO and turn over to HCFA copies of all records, data, and software necessary to assure uninterrupted service by a successor OPO that is newly designated. Records and data subject to this requirement include records on individual donors (both identifying data and data on organs retrieved), records on transplant candidates (both identifying data and data on immune system and other medical indications), and procedural manuals and other materials used in conducting OPO operations. Donor records must include at least information identifying the donor (for example, name, address, date of birth, Social Security number, etc.), the organs and tissues retrieved, date of the organ retrieval, and test results.

5. In § 485.304, the introductory text of the section is republished; the introductory text for paragraph (d) is revised; the introductory text for paragraph (f) is republished; paragraph (f)(3), (i), (o), and (p) are revised; and new paragraphs (q) and (r) are added as follows:

§ 485.304 Condition: Qualifications required of an organization for it to be a designated organ procurement organization.

To be designated by the Secretary as the OPO for its service area in accordance with § 485.303 of this subpart, an organization must at the time of application and throughout the period of its designation—

* * * * *

(d) Make available to HCFA documentation of its service area. An OPO must provide to HCFA quantifiable data showing that the area is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of such an area. Documentation that precisely defines the proposed service area includes the following:

* * * * *

(f) Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. The board of directors or advisory board must include—

* * * * *

(3) A physician with knowledge, experience, or skill in the field of human histocompatibility, or an individual with a doctorate degree in a biological science and with knowledge, experience, or skills in the field of human histocompatibility;

* * * * *

(i) Have a system to allocate donated organs equitably among transplant centers and patients consistent with OPTN criteria as approved by the Secretary;

* * * * *

(o) Have a procedure for ensuring the confidentiality of patent records. Information from or copies of records may be released only to authorized individuals and the OPO must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records may be released by the OPO only in accordance with Federal or State laws, court orders, or subpoenas;

(p) Conduct and participate in professional education concerning organ procurement;

(q) Assist hospitals in establishing and implementing protocols for making routine inquires about organ donations by potential donors; and

(r) Assure appropriate tests consistent with OPTN standards and CDC guidelines are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome.

6. Section 485.305 is revised as follows:

§ 485.305 Condition: Organ Procurement and Transplantation Network participation.

In order to be designated as the OPO for its service area, and to continue to be the designated OPO once designated, and OPO must be a member of, have a written agreement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN), established and operated in accordance with section 372 of the Public Health Service Act. The term "rules and requirements of the OPTN" means those rules and requirements that have been approved and issued by the Secretary. In order to be binding on OPOs participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement. No OPO is considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations in this section unless the Secretary has given the OPN formal notice that he or she approves the decision to exclude the entity from the OPTN and also has notified the entity in writing.

7. Section 485.306 is amended by revising the introductory text of paragraph (a) and paragraph (b) as follows:

§ 485.306 Condition: Performance standards for organ procurement organizations.

(a) HCFA will not redesignate any OPO that fails to meet the following performance standards:

* * * * *

(b) An OPO which has not previously been designated by HCFA for a particular service area is exempt from meeting the performance standards in paragraphs (a) (1) and (2) of this section for its first two years of designation as the OPO for that area. These performance standards are not used to measure the OPO's qualifications to be

designated until two years after the OPO has been first designated.

8. Section 485.307 is revised to read as follows:

§ 485.307 Failure to meet requirements.

Failure to continue to meet any of the requirements in §§ 485.304 and 485.305 of this subpart or to meet the performance standards in § 485.306(a) of this subpart (after two years after designation (see § 485.306(b) of this subpart)) may result in termination of the OPO's agreement with the Secretary.

9. In § 485.308, the section heading and paragraph (a) introductory text are revised as follows:

§ 485.308 OPO service area requirements.

(a) The Secretary may designate only one OPO per service area. Applications for designation are accepted only during a period when the service area is an open area. If more than one organization applies and substantially meets the requirements of § 485.304 of this subpart in a given service area, the Secretary will consider other factors in reaching a decision concerning which organization to designate. These factors are as follows:

* * * * *

10. A new § 485.309 is added as follows:

§ 485.309 Changes in ownership or service area.

(a) If a designated OPO is considering a change in ownership or a change in its service area, it must notify HCFA before putting the change into effect. This notification is required to assure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. A change in ownership takes place if any of the following occurs:

(1) If, in the case of a partnership, one or more partners are gained, lost, or substituted.

(2) If, in an unincorporated sole proprietorship, title and property is transferred to another party.

(3) The merger of one entity into another or the consolidation of one entity with another.

(b)(1) If HCFA finds that the changed entity has changed to such an extent that it no longer satisfies the prerequisites for OPO designation, HCFA may terminate the OPO's agreement and declare the OPO's service area to be an open area.

(2) If HCFA finds that the changed entity continues to satisfy the prerequisites for OPO designation, the period of designation is the remaining designation term of the OPO that was reorganized. If more than one designated OPO is involved in the reorganization, the remaining designation term is ordinarily the longest of the remaining period. The performance standards of § 485.306 apply at the end of this remaining period.

(c) If a designated OPO is considering a change in its service area, it must obtain HCFA approval before putting the change into effect. In the case of a service area change that results from a change of ownership due to merger or consolidation, the entities involved must submit anew the information required in an application for designation, or other such written documentation as HCFA may determine to be necessary to determine the remaining period of designation.

11. A new § 485.311 is added as follows:

§ 485.311 Terminations.

(a) *Types.*—(1) *Voluntary termination.* If an OPO wishes to terminate its agreement, it must send written notice of its intention with the proposed effective date to HCFA. HCFA may approve the proposed date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed date if it determines that it would not disrupt services to the service area or otherwise interfere with the effective and efficient administration of the Medicare and Medicaid programs. If HCFA determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services is deemed to constitute a voluntary termination by the OPO, effective on a date determined by HCFA.

(2) *Involuntary termination.* HCFA may terminate an agreement if it finds that an OPO no longer meets the conditions for coverage in this subpart, or is not in substantial compliance with any other applicable Federal regulations or provisions of titles XI, XVIII, or XIX of the Act. HCFA may also terminate an OPO immediately in cases of urgent need, such as the discovery of unsound medical practices.

(b) *Notice to OPO.* HCFA gives notice of termination to an OPO at least 15 days before the effective date stated in the notice.

(c) *Appeal right.* The OPO may appeal its termination in accordance with the provisions set forth in part 498 of this chapter, which sets forth appeals procedures for determinations that affect participation in the Medicare and Medicaid programs.

(d) *Effects of termination.* When an OPO is terminated—

(1) Payments are not made to it for services furnished on or after the effective date of termination; and

(2) HCFA will accept applications from any entity to be the designated OPO for that area.

(e) *Public notice.* In the case of voluntary termination, the OPO must give prompt public notice of the date of termination, and such information regarding the effect of that termination as HCFA may require, through publication in local newspapers in the service area. In the case of involuntary termination, HCFA gives notice of the date of termination.

(f) *Reinstatement.* HCFA may, at its discretion, reinstate a terminated OPO if it finds that the cause for termination has been removed, is satisfied that it is not likely to recur, and it has not designated another OPO for the service area.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: January 12, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: April 25, 1991.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received at the office of the Federal Register June 17, 1991.

[FR Doc. 91–14751 Filed 6–20–91; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for Six Plants and Myrtle's Silverspot Butterfly From Coastal Dunes in Northern and Central California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed endangered status for six plants and one butterfly:

Chorizanthe howellii (Howell's spineflower), *Chorizanthe valida* (Sonoma spineflower), *Erysimum menziesii* (Menzie's wallflower), *Gilia tenuiflora* ssp. *arenaria* (Monterey gilia), Layia carnosa (beach layia), *Lupinus tidestromii* (clover lupine), and Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) and that the comment period is reopened and extended. The hearing and reopening and extension of the comment period will allow all interested parties to submit oral or written comments on the proposal. The proposed rule was published March 22, 1991 at 56 FR 12318.

DATES: The comment period on the proposal is reopened and extended until July 22, 1991. The public hearing will be held from 7 p.m. to 9 p.m. on Wednesday, July 10, 1991, in San Rafael, California. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held in room 322 of the Marin County Civic Center in San Rafael, California. Written comments and materials should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1823, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim A. Bartel or Mr. Chris Nagano, Sacramento Field Office, at the above address (telephone (916) 978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The six plants and the butterfly proposed for listing are restricted to northern and central California within the foredunes and adjacent sandy habitats occupied by coastal scrub or coastal prairie. The six plant taxa, the butterfly and its larval foodplant are threatened by one or more of the following: Commercial and residential development, competition from alien plants, off-road vehicle use, equestrian use, trampling by hikers and livestock, sand mining, disposal of dredged material, and perhaps stochastic (i.e., random) extinction by virtue of the small isolated nature of the remaining populations. A proposal to list the six plants and the butterfly as endangered species was published in the **Federal Register** on March 22, 1991 (56 FR 12318).

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On May 3, 1991, the Service received a written request for a public hearing from Ms. Mary L. Hudson of Howard, Rice, Nemerovski, Canady, Robertson and Falk representing the Marin Coast Golf Ranch. As a result, the Service scheduled a public hearing for July 10, 1991, from 7 p.m. to 9 p.m. in room 322 of the Marin County Civic Center, San Rafael, California.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period closes on July 22, 1991. Written comments should be submitted to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Mr. Chris Nagano, Staff Entomologist, Sacramento Field Office, at the above address.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subject in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: June 17, 1991.

Willam E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91–14790 Filed 6–20–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-085]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release a genetically engineered organism into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Programs Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release a genetically engineered organism into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-144-01	Monsanto Agricultural Company.	05-24-91	Cotton plants genetically engineered to express the *Bacillus thuringiensis* subsp. *kurstaki* deltaendotoxin protein.	Kauai County, Hawaii.

Done in Washington, DC, this 17th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-14758 Filed 6-20-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Management Direction on Northern Spotted Owls: National Forests in Oregon, Washington, and Northern California

AGENCY: Forest Service, USDA.

ACTION: Notice: revised notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement on management direction for northern spotted owls on May 8, 1991, at 56 FR 21354. That notice indicated the Forest Service expected to make the draft environmental impact statement (DEIS) available for agency and public review by January 1992, and the final environmental impact statement (FEIS) available by July 1992. The agency gives notice that it now expects to make the DEIS available for agency and public review on or about September 14, 1991, and the FEIS on or about February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jerald N. Hutchins, Leader, Spotted Owl Team, c/o John F. Butruille, Regional Forester, 319 SW. Pine Street, P.O. Box 3623, Portland, Oregon 97208.

Dated: June 17, 1991.

Jeff M. Sirmon,

Deputy Chief, FS.

[FR Doc. 91-14789 Filed 6-20-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-039]

Canned Bartlett Pears From Australia; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on canned Bartlett pears from Australia because it continues to be of interest to interested parties.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Melissa Skinner, Office

of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4851.

SUPPLEMENTARY INFORMATION:

Background

As of March 31, 1990, the Department of Commerce (the Department) had not received a request for an administrative review of the antidumping finding on canned Bartlett pears from Australia (38 FR 7566, March 23, 1973) for four consecutive annual anniversary months. As specified by § 353.25(d)(4) of the Commerce Regulations, the Department published a notice of intent to revoke this finding in the **Federal Register** at the beginning of the fifth annual anniversary month, and served written notice of its intent on each interested party on its service list (56 FR 8962, March 4, 1991). This notice afforded interested parties the opportunity to submit written objections to the proposed revocation, and stated that the Department would proceed with revocation if no interested party filed written objections or a request for review by March 31, 1991.

Scope of Finding

Imports covered by this finding are shipments of canned Bartlett pears from Australia. Such merchandise was classifiable under item number 148.8600 of the Tariff Schedules of the United States Annotated through 1988. This merchandise is currently classifiable under item number 2008.40.00 of the HTS. The HTS item number is provided only for convenience and Customs purposes. The written description of the scope remains dispositive.

Determination Not To Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. According to § 353.25(d)(4)(iii) of the Commerce Regulations, the Secretary is authorized to reach this conclusion if, after publication of a notice of intent to revoke a finding or order in the **Federal Register**, the Department receives no written objections to the proposed revocation or requests for review of the finding in question within the time limits specified in the notice.

On March 29, 1991, we received a written objection from counsel to the Pacific Coast Canned Pear Service, the petitioner in this case, in response to our notice of intent to revoke the antidumping finding on canned Bartlett pears from Australia. Based on this objection, the Department has concluded that the finding continues to be of interest to interested parties. Therefore, we have determined not to revoke the antidumping finding on canned Bartlett pears from Australia.

Dated: April 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14849 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–437–601]

Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Brad Hess, or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–8371, 377–3773, or 377–3965, respectively.

PRELIMINARY RESULTS OF ANTIDUMPING DUTY ADMINISTRATIVE REVIEW:

Background

On November 19, 1990, the Department published in the **Federal Register** (55 FR 46146) the final results of its last administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from Hungary (52 FR 23319, June 19, 1987). The petitioner, The Timken Company, requested that we conduct an administrative review in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review on July 26, 1990 (55 FR 30490). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We sent a questionnaire to Magyar Gordulocsopagy Muvek ("MGM") on October 11, 1990. On October 31, 1990, MGM requested an extension of time to respond to the questionnaire. We granted the extension until November 21, 1990. On November 13, 1990, MGM requested an additional extension of time to respond to the questionnaire, until January 24, 1991. We granted an extension only until December 10, 1990. We received MGM's questionnaire response on the extended due date. We sent a deficiency letter to MGM on December 20, 1990. On December 21, 1990, MGM requested an extension of time to respond to the deficiency letter. We granted the extension until January 25, 1991. We received MGM's deficiency response on the extended due date. We conducted verification of MGM's questionnaire responses from May 6, 1991, to May 10, 1991, in Budapest and Diosd, Hungary.

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period June 1, 1989, through May 31, 1990. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

United States Price

We based the United States Price on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on either the FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for brokerage and handling and foreign inland freight charges. For the brokerage and handling reported for the TRB model examined at verification, we noted that the correct calculation methodology yielded an amount different from that reported. MGM officials were unable to demonstrate how they allocated total brokerage and handling charges to arrive at the amount reported for each TRB. Therefore, for every TRB model we have used the corrected per-kilogram brokerage and handling amount for the TRB model we examined at verification as best information available. We valued the inland freight deductions using surrogate data based on Yugoslavian freight costs. We selected Yugoslavia as the surrogate country for the reasons

explained in the "Foreign Market Value" section of this notice.

Foreign Market Value

In the most recent review of this order, the Department treated Hungary as a non-market economy country. None of the parties to the proceeding are contesting such treatment in this review, so we have calculated foreign market value in accordance with section 773(c) of the Tariff Act and § 353.8 of the applicable Commerce Regulations (1988). Section 773(c) of the Act requires us to base foreign market value on a valuation of the factors of production in a market economy country that is at a level of development comparable to the non-market economy country and is a significant producer of comparable merchandise.

It is the Department's practice to value factor of production inputs at actual acquisition prices if it can be established that those inputs are purchased from a market economy country. Where market economy prices were not provided, we obtained information for valuing the factors of production from publicly available sources in a market economy.

We determined that South Africa, Yugoslavia, Algeria, Malaysia, Brazil and Venezuela would be the most appropriate surrogates for Hungary. We sent cables requesting values for the factors of production to the American Embassies in each possible surrogate country. Although we received a response from each country, we did not receive complete information from any one country. We chose Yugoslavia as the surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Yugoslavia than for other potential surrogate countries with comparable economies.

We utilized factors of production reported by MGM. The material cost for each component was determined by multiplying the gross weight of steel by the steel unit price less the salable scrap. The scrap factor was reduced to account for waste and burn off. MGM did not submit actual material usage factors for three of the TRBs under review. For these TRBs we increased standard material factors by the average variance found for each part. Average variances were calculated for cups, cones and rollers. MGM failed to report actual material usage for cages. Therefore, the reported standard material costs for cages were increased by the overall average percentage variance calculated for cups, cones and rollers.

The labor cost for each component was calculated by multiplying the total labor minutes by the surrogate labor rate. As described in our verification report, we noted that MGM made several errors in the labor usage factors reported. MGM submitted actual labor usage information for only five of eight products. Standard labor hours, instead of actual labor hours, were reported for one of the production steps in the calculation. In addition, actual labor factors were not submitted for any of the TRB cages, a washing stage for cups and cones, and the TRB assembly steps. Actual labor usage figures submitted by MGM were increased to account for MGM's failure to include certain actual labor factors in its calculations. The standard labor factors, for parts and processes for which actual labor factors were not submitted, were adjusted and used in the absence of actuals as follows: Increased by either the average variance found for that part, where available, or, otherwise, by the percentage of the overall variance found, as applicable.

We valued the factors of production as follows:

- Certain raw material costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency. As described in our verification report, the price that MGM's importer pays the steel supplier (the supplier's asking price less a negotiated discount) is the only portion of the transaction that occurs in hard currency. Therefore, we have used the price paid by MGM's importer as the price of these inputs. However, as set forth in our verification report, we noted that not all of the prices of steel inputs were reported at prices for which the discount had already been deducted. For those steel input prices where we could not document the inclusion or exclusion of discounts, we assumed that the discounts had already been deducted and used the reported prices as best information available.

Based upon findings at verification, we adjusted MGM's market economy steel import data to include shipments that were omitted from its response and to correct clerical errors. These unreported and misreported shipments were at prices both higher and lower than the reported shipments. Therefore, we used these shipment data as corrected at verification, in our calculations of the average hard-currency steel purchase prices.

- In the absence of market economy prices paid by MGM, we valued other raw material inputs using Statistics of Foreign Trade of the SFR Yugoslavia Year 1989. We used Yugoslavian C.I.F. import data to value hot-rolled steel rods, steel strips and steel scrap.
- We valued both inland freight for the finished TRBs and inland freight on the steel inputs using publicly available Yugoslavian truck freight rates. This information was taken from the public record of the 1987–1988 Administrative Review of TRBs from the Republic of Romania.
- We valued direct labor using Yugoslavian labor rate data obtained from the United Nations' Industrial Statistics Yearbook 1988. We used the International Financial Statistics wage index to adjust the labor rate to more closely coincide with the period of review. This rate is the average of salaries and wages of employees plus supplements to wages and salaries for the metal products industry in Yugoslavia. Therefore, this rate is representative of actual labor rates in Yugoslavia for all categories of employees within the metal products industry.
- We used the International Financial Statistics producer price index to adjust factor values drawn from periods outside the review period.
- We were unable to obtain factory overhead and indirect labor from any of the potential surrogate countries. Therefore, we valued factory overhead and indirect labor using information supplied by the American Embassy in Lisbon for a previous review period of TRBs from Hungary. The information provided by the Embassy reflects the costs a producer of TRBs would incur in Portugal and is the most reasonable data available.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the Final Determinations of Sales at Less than Fair Value: TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), TRBs from the Socialist Republic of Romania, 52 FR 17433 (May 8, 1989), TRBs from the People's Republic of China, 52 FR 19748 (May 27, 1987), and Final Results of Antidumping Duty Administrative Review: TRBs from the Republic of Hungary, 55 FR 48146 (November 19, 1990), the value for packing was based on publicly available data contained in the public file of the investigation of TRBs from Italy, 52 FR 24198 (June 29, 1987).

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank or at the rates published by the International Monetary Fund in International Financial Statistics. Daily certified rates were not available for Yugoslavian dinars for the period of review. Therefore, for purposes of these preliminary results, we used the daily exchange rates provided by Jugobanka in New York. Jugobanka officials explained that the rates provided to the Department were obtained from the Yugoslavian central bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Magyar Gordulocsopagy Muvek	6/1/89–5/31/90	1.43

The Department will issue appraisement instructions concerning MGM directly to the Customs Service upon completion of this administrative review.

Furthermore, the cash deposit rate for MGM or any other producer or exporter of Hungarian TRBs will be that established in the final results of this administrative review. This deposit requirement will be effective upon publication of the final results of this administrative review for all shipments of Hungarian TRBs entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration on or before July 12, 1991, and rebuttal briefs no later than July 19, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, on July 23, 1991, in room 3708 in the main Commerce Building, at 1:30 p.m., to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Persons interested in attending the hearing should contact the Department as the scheduled date approaches to confirm the date and time of the hearing.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number, (2) the reasons for attending, (3) a list of the issues to be discussed, and (4) the number of participants.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: June 14, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14850 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–DS–M

(C–357–005)

Certain Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 4, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain cold-rolled carbon steel flat-rolled products from Argentina. We have now completed that review and determine the total bounty or grant during the period January 1, 1987 through December 31, 1987 to be 0.0001 percent *ad valorem* for Propulsora Siderurgica, S.A.I.C., and 2.40 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem is de minimis.*

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 417) the preliminary results of its administrative review of the countervailing duty order on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006; April 26, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Argentine cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped, whether or not painted or varnished, and whether or not pickled, not cut, not pressed, and not stamped to non-rectangular shape, not coated or plated with metal; over 12 inches in width, and 0.1875 inch or more in thickness, as provided for during the review period in item 607.8320 of the Tariff Schedules of the United States Annotated (TSUSA); or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils, as provided for during the review period in items 607.8350, 607.8355 or 607.8360 of the TSUSA. Such merchandise is currently classifiable under the following *Harmonized Tariff Schedule* (HTS) item numbers:

7209.11.00	7209.12.00	7209.13.00	7209.14.00
7209.21.00	7209.22.00	7209.23.00	7209.24.00
7209.31.00	7209.32.00	7209.33.00	7209.34.00
7209.41.00	7209.42.00	7209.43.00	7209.44.00
7209.90.00	7210.70.00	7211.30.50	7211.41.00
7211.49.50	7211.90.00	7212.40.50	

The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987, and thirteen programs: (1) Rebate upon export of indirect taxes paid (Reembolso); (2) Export financing under OPRAC–1, Circular RF–2l; (3) Pre-financing of exports, Circular RF–153; (4) Medium and long-term loans under Law 22.510; (5) Preferential pricing for purchases of inputs; (6) Purchase of residue coal at preferential prices; (7) Capital and income tax exemptions; (8) Incentives for trade (stamp tax exemption under Decree 716); (9) Equity infusions and capitalization; (10) Capital grants; (11) Government loan guarantees; (12) Incentives for export; and (13) Forgiveness of debt.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioner, USX

Corporation, and from two respondents, Propulsora Siderurgica S.A.I.C. (Propulsora) and Sociedad Mixta Siderurgica Argentina (Somisa).

Comment 1: Petitioner argues that the Department should determine that benefits were received by Somisa in 1987 from government equity infusions made from 1978 through 1983; the Department found Somisa unequityworthy, and the equity infusions inconsistent with commercial considerations, in Cold-rolled Carbon Steel Flat-rolled Products from Argentina: Final Affirmative Countervailinq Duty Determination and Countervailinq Duty Order (49 FR 18006; April 26, 1984), hereinafter Final Determination). Petitioner further alleges that Somisa received countervailable benefits in 1987 from government equity infusions provided from 1984 through 1987 under Decree 2887/78, which authorized government reimbursement of debt expenditure, including payment of interest, commissions and other fees, in exchange for equity in Somisa.

Department's Position

We found Somisa to be unequityworthy from 1978 through 1983 in our Final Determination, and we have examined whether equity infusions found countervailable in that determination provided benefits to Somisa in 1987. In addition, we examined Somisa's financial statements since 1983 and found that the Argentine Treasury continued to provide equity infusions to the company from 1984 through 1987 pursuant to Decree 2887/78. The statements also show that the company posted operating losses and did not register net profits for that period. Based on our evaluation of the financial statements, we determine that Somisa continued to be unequityworthy from 1984 through 1987. Consequently, equity infusions received between the period 1978 through 1987 may confer a benefit.

Due to inflation, the nominal values of the equity infusions in Somisa have increased over the years. In fact, Argentine companies must periodically restate the value of certain accounts (including equity) to reflect the effects of inflation. Since we do not have the standard index used in making these valuation adjustments, as best information available we used the annual average austral/U.S. dollar exchange rate in the year of receipt to obtain the dollar value of the government's equity infusions in each year since 1978.

To calculate the benefit from the equity infusions, we applied the rate of return shortfall methodology. We measured Somisa's rate of return by dividing its net loss in 1987 by its total equity and compared the result with an estimated average rate of return in 1987 for U.S. firms investing in Argentina. We used this rate of return as best information available because a national average rate of return on equity for Argentina was not available. Our estimated figure was derived from data in the August 1990 Survey of Business Trends published by the Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis. We then multiplied the rate of return shortfall by the dollar value of all government equity infusions received from 1978 through 1987.

In those instances where the benefit calculated using the rate of return shortfall methodology exceeded the amount we would have calculated for the review period had we treated the equity infusion as an outright grant, we applied the grant cap. To determine the grant cap, we used a declining balance methodology and allocated each equity infusion over 15 years (the average useful life of steel industry assets in integrated steel mills according to the Asset Guideline Classes of the U.S. Internal Revenue Service). We used as the discount rate the national average corporate bond rates in the United States as reported in the Morgan Guaranty Trust Company's World Financial Markets.

As applicable, we added the total dollar benefit from either the rate of return shortfall or from the amount allocated to the review period as a result of applying the grant cap, and converted the sum to australs using the 1987 average austral/U.S. dollar exchange rate. Finally, we divided this austral benefit by the value of total sales in the review period. On this basis, we determine the benefit to Somisa from equity infusions to be 0.65 percent *ad valorem*.

Comment 2: Propulsora requests that, if the Department determines that Somisa received a benefit in the review period from equity infusions, the Department calculate a company-specific rate for Propulsora, in accordance with 19 CFR 355.20(d)(2), because the two companies would show "materially different benefits."

Department's Position

We have applied a company-specific rate to Propulsora because Propulsora's benefit in this review is *de minimis* which, pursuant to 19 CFR 355.22(d)(2), is significantly different.

Comment 3: Petitioner claims that Decree 1554/86 allows the temporary admission of certain products used in the manufacture of cold-rolled sheet and strip to be imported into Argentina for industrial processing and eventual export without payment of import duties and certain taxes. Since the 1986 tax incidence study for the reembolso is premised on the assumption that imported materials consumed in the production of cold-rolled sheet are subject to the payment of these taxes and import duties, exporters of this product effectively receive a double rebate: the exemption of these duties and taxes and the receipt of the full 10 percent reembolso. While the Department verified the payment of these taxes and duties on 1986 imports, it did not verify their payment on 1987 imports. Consequently, the only allowable indirect taxes in this review are those paid at the final stage, since the validity of the 1986 study cannot be accepted for 1987 with respect to the incidence of indirect taxes at prior stages.

Propulsora and Somisa dispute petitioner's contention that the Temporary Admission program provided for in Decree 1554/86 renders the 1986 tax incidence study invalid. Although the Temporary Admission program gives an exporter the option of importing raw material or inputs without the payment of any import duties or certain taxes, use of the program effectively lowers the amount of the rebate under the reembolso program, since the base on which the reembolso is paid is reduced by the value of the imported raw material or input.

Propulsora further contends that petitioner's allegation is based on the premise that exporters actually used the temporary admission program during the review period. In fact, Propulsora, like many other exporters, preferred to pay the duties on its imported raw materials rather than use the Temporary Admission program, so that it would be entitled to the full reembolso amount.

Finally, respondents dismiss petitioner's contention that the reembolso study had become invalid by arguing that, in fact, there was no change in the tax structure. Furthermore, the Government of Argentina periodically requires the submission of new studies whenever there are material changes in the tax structure which would affect the reembolso; it should not be expected to do so every time there is a change in the tax rates. The Department requires only that the government reexamine its rebate schedules periodically. The Department thoroughly examined the 1986 tax incidence study and determined that it

provided a reasonable basis for the reembolso rate during 1987. Moreover, the Department's examination of 1987 company documents further supported the validity of the study.

Department's Position

We disagree with the petitioner. The argument that changes in Argentine law allowing the exemption of import duties and taxes invalidated the 1986 tax incidence study with respect to exports for 1987 has no merit, since the Temporary Admission program does not affect the tax incidence for reembolso purposes. Article 1 of Decree 1555/86 limits the reembolso program to a rebate of internal taxes and "taxes for the previous import for use or consumption" of an input; Article 3 of Decree 1554/86 clarifies that imports entering under the Temporary Admission program are not imports for consumption. Therefore, if no import duties are paid, they cannot be rebated. As Propulsora points out, this is implemented in the calculation of the reembolso rebate: the base on which the rebate is calculated is reduced by the value of any product imported under the Temporary Admission program. Therefore, we determine that the 1986 tax incidence study is valid for the purposes of assessing whether the reembolso rates applied in 1987 reasonably reflect the amount of actual duties and indirect taxes paid on the subject merchandise.

Comment 4: Propulsora argues that the Department must take into account the total cost of all RF–21 loans to determine whether the use of the program as a whole conferred a benefit. Because the exporter does not discount individual letters of credit and negotiate the terms of each loan individually to obtain RF–21 financing, the Department cannot accurately analyze the benefit conferred by the program on a loan-by-loan basis. Rather, the exporter negotiates a line of credit to discount the receivables based on projected sales. The fact that there may be a mix of receivables (and, therefore, individual loans) is irrelevant from the exporter's perspective. Furthermore, the exporter can only judge the effect of its financial decision by reviewing the totality of its financing over the relevant period.

Department's Position

We disagree. RF–21 financing is based on the discounting of foreign bills of exchange on an export sale-specific basis. Therefore, we look at each loan independently to determine if a countervailable benefit was conferred.

Comment 5: Propulsora and Somisa argue that the Department's failure to consider all costs incurred on repayment of the RF–21 and RF–153 loans distorts the analysis and creates artificial subsidies. The Department incorrectly disregarded the dollar-indexed principal repayments (and, therefore, the devaluation expense) on loans where some interest payments were made in 1987 but all principal repayments were made in 1988. Respondents contend that the preferentiality of these dollar-indexed loans can only be determined by examining the costs incurred over the entire life of the loan. If the Department examines the entire loan and determines that it is not preferential, the Department should then determine that there is no countervailable benefit during the review period. If the analysis of the entire loan reveals a benefit, the Department should countervail any benefit received on those interest payments made during the review period according to its standard cash-flow approach.

Department's Position

Loans provided under RF–21 and RF–153 are short-term fixed-rate dollar-indexed loans granted in australs at annual interest rates of 1 to 3.50 percent. Interest payments on RF–21 loans are due in June and December of each year, and principal payments are made in two equal installments every six months. Interest payments on RF–153 loans are due each calendar quarter with the principal due at maturity. Since the principal payable in australs is equivalent to the U.S. dollar value of the principal disbursed in australs, the repayment of the principal included significant devaluation costs, given the depreciation of the austral vis-a-vis the U.S. dollar during 1987–88. The cost of these loans, therefore, consisted of relatively low interest payments made during the life of the loan with the major cost incurred at maturity when the principal was repaid.

The commercial loan we used for our benchmark is a 30-day, rolled-over loan, which was the predominant alternative form of trade financing in Argentina during the review period. Interest rates ranged from 6.4 to 14.3 percent per month during the review period. Because interest payments were due every 30 days, the cost of the commercial benchmark loan was relatively even throughout the life of the loan.

A comparison between the program loans and the commercial benchmark loans shows a difference in the cash-flow effect due to the timing of interest payments and the repayment of principal. As long as the full term of the loan fell within the review period, the difference in the timing of the payments created no problem for the calculation of the benefit. However, in those instances where the final interest payments and principal repayments on the RF–21 and RF–153 loans fell outside the review period, our cash-flow methodology, when applied only to the payments made during the review period, potentially overstates the benefit of these loans.

In order to determine whether the benefit was overstated in our preliminary results, we calculated the total cost of each program loan, including interest and devaluation, and the total cost of the commercial benchmark loan. To do so, we had to extend our analysis beyond the review period. The program loans extended to May 1988. To ensure comparability between program loans and benchmark loans in terms of maturity and prevailing interest rates, we constructed four annual benchmarks, each beginning in a different quarter of the review period. We then calculated the benefit on the basis of the appropriate benchmark rate applicable to the quarter in which the program loan originated. If the total cost of the program loan exceeded the total cost of the commercial loan, we determined that there was no benefit during the review period. For the remaining loans, we used our cash-flow methodology to calculate the cost differential between the program loans and the loans at the benchmark rate up to the end of the review period. However, if the differential during the review period exceeded the benefit calculated over the life of the preferential loan, we capped the benefit for the review period at the latter amount. On this basis, we determine the bounty or grant from RF–21 financing to be 0.0001 percent *ad valorem* for Propulsora and from RF–153 financing to be 1.75 percent *ad valorem* for Somisa.

Comment 6: Petitioner contends that in determining the benefit from export financing under RF–21 and RF–153 loans, the Department should use the average interest rates for the months in which loans were outstanding rather than for the whole twelve-month review period. This would be consistent with the use of semi-annual benchmarks in Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Argentina (53 FR 37619; September 27, 1988).

Propulsora does not object to the use of semi-annual average monthly interest rates. Somisa, on the other hand, agrees with the Department's use of an annual average rate.

Department's Position

We agree that a single average benchmark for the twelve-month review period is not appropriate. As we point out in Department's Position to Comment 5, we have used four annual benchmarks to more accurately determine whether, and to what extent, benefits were received from RF–21 and RF–153 loans during the review period.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be 0.0001 percent *ad valorem* for Propulsora and 2.40 percent *ad valorem* for all other firms for the period January 1, 1987 through December 31, 1987. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Propulsora and to assess countervailing duties of 2.40 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after January 21, 1987 and on or before December 31, 1987.

Further, as provided by for section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive the cash deposit of estimated countervailing duties on all shipments of the subject merchandise from Propulsora and to collect a cash deposit of estimated countervailing duties of 2.40 percent of the f.o.b. invoice price on all shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 13, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14851 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–507]

Certain Fresh and Chilled Whole Atlantic Groundfish From Canada; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada, effective January 1, 1991, because it is no longer of interest to interested parties.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 20595) its intent to revoke the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada (51 FR 17785; May 15, 1986).

Interested parties who objected to the revocation were provided the opportunity to submit their comments on or before May 31, 1991. Additionally, as required by § 355.25(d)(4)(ii) of the Department's regulations, the Department served written notice of its intent to revoke this order on each interested party listed on the service list. On May 21, 1991, the Department published a notice of opportunity to request administrative review in this proceeding (56 FR 23271) for the period January 1, 1990 through December 31, 1990.

Imports covered by this order are shipments of certain fresh and chilled whole Atlantic groundfish, including cod, haddock, pollock, hake, and flatfish (including flounder and sole). These species are generally referred to collectively as "groundfish" because they live on or near the seabed. The term "fresh" includes fish that are chilled, but excludes fish that have been frozen. Whole fish include fish which are whole, or processed by removal of heads, viscera, fins or any combination thereof, but not otherwise processed. Through 1988, such merchandise was classifiable under item numbers 110.1585, 110.1593, 110.3560, 110.5200 of the Tariff Schedules of the United States Annotated (TSUSA).

This merchandise is currently classifiable under item numbers 0302.21.00 (excluding halibut), 0302.22.00, 0302.23.00, 0302.29.00, 0302.50.00, 0302.62.00, 0302.63.00, 0302.69.10, and 0302.69.20 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

We received no objections to our notice of intent to revoke the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada and have not received a request to conduct an administrative review of the order for the past five consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Therefore, the Department is revoking the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada. The effective date of revocation is January 1, 1991.

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Canada on or after January 1, 1991.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14852 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–005]

Litharge and Red Lead From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances countervailing

duty administrative review and revocation of countervailing duty order.

SUMMARY: On May 6, 1991, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on litharge and red lead from Mexico. We have now completed that review and determine to revoke the countervailing duty order on litharge and red lead from Mexico effective July 1, 1990.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 20596) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on litharge and red lead from Mexico (47 FR 54847; December 6, 1982). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are litharge and red lead from Mexico. Through 1988, such merchandise was classifiable under item numbers 473.5200 (litharge) and 473.5600 (red lead) of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the following Harmonized Tariff Schedule (HTS) numbers: 2824.10.00 and 2824.20.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on litharge and red lead from Mexico. The effective date of the revocation is July 1, 1990.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipments of litharge and red lead from Mexico entered, or withdrawn from warehouse, for consumption on or after July 1, 1990.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.22(h)(1) and 355.25 (d)(1), (d)(2), and (d)(3).

Dated: June 14, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14853 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On February 12, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada. We have now completed that review and determine the net subsidy during the period April 1, 1988 through March 31, 1989 to be Can$0.0449/lb. for live swine (other than sows and boars) and Can$0.0047/lb. for sows and boars.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 5676) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of live swine from Canada. Through 1988, such merchandise was classifiable under item number 100.8500 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 0103.91.00 and 0103.92.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1988 through March 31, 1989 and 41 programs: (1) Agricultural Stabilization Act; (2) Feed Freight Assistance Program; (3) National Tripartite Stabilization Scheme for Hogs; (4) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement (ARDSA); (5) Canada/Quebec Subsidiary Agreement on Agri-Food Development; (6) Saskatchewan Hog Assured Returns Program (SHARP); (7) British Columbia Farm Income Insurance Plan (FIP); (8) Quebec Farm Income Stabilization Insurance Programs (FISI); (9) Alberta Crow Benefit Offset Program; (10) Ontario Farm Tax Rebate Program; (11) Ontario (Northern) Livestock Improvement and Transportation Assistance Programs; (12) Ontario Pork Industry Improvement Plan (OPIIP); (13) Quebec Productivity Improvement and Consolidation of Livestock Production Program; (14) Quebec Regional Development Assistance Program; (15) Saskatchewan Livestock Investment Tax Credit; (16) Saskatchewan Livestock Facilities Tax Credit Program; (17) British Columbia (B.C.) Feed Grain Market Development Program; (18) British Columbia Special Hog Payment Program; (19) Manitoba Hog Income Stabilization Plan; (20) Alberta Red Meat Interim Insurance Program; (21) British Columbia Swine Herd Improvement Program; (22) New Brunswick Hog Price Stabilization Program; (23) New Brunswick Livestock Incentives Program; (24) New Brunswick Agricultural Development Act-Swine Assistance Program; (25) New Brunswick Hog Marketing Program; (26) New Brunswick Swine Industry Financial Restructuring Program; (27) New Brunswick Swine Assistance Policy on Boars; (28) Newfoundland Weanling Bonus Incentive Policy; (29) Newfoundland Hog Stabilization Program; (30) Nova Scotia Natural Products Act-Pork Price Stabilization Program; (31) Nova Scotia Swine Herd Health Policy; (32) Nova Scotia Transportation Assistance Program; (33) Nova Scotia Improved Sire Policy; (34) Prince Edward Island Hog Price Stabilization Program; (35) Prince Edward Island Transportation Grants;

(36) Prince Edward Island Swine Development Program; (37) Prince Edward Island Interest Payments on Assembly Yard Loan; (38) Ontario Hog Price Stabilization Program; (39) Ontario Weaner Pig Stabilization Plan; (40) Newfoundland Farm Products Corporation-Hog Price Support Program; and (41) Newfoundland Weanling Bonus Incentive Policy.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Case briefs were submitted by the petitioner, the National Pork Producers Council (NPPC), and four parties to the proceeding, the Canadian Pork Council (CPC), the Government of Quebec (GOQ), P. Quintaine & Son Ltd., of Brandon, Manitoba (Quintaine), and Pryme Pork Ltd., of St. Malo, Manitoba (Pryme). Rebuttal briefs were submitted by the NPPC, CPC, and the GOQ. At the request of the NPPC, the GOQ, and Pryme, we held a public hearing on April 8, 1991.

Comment 1: NP argues that the Tripartite Scheme for hogs is *de jure* limited to a specific industry, since the most appropriate level of analysis for determining specificity is the Tripartite Scheme for hogs itself. NPPC further argues that Bill C–25 was only an enabling statute which allowed the federal government to create a number of distinct programs targeted toward specific commodities, with each distinct program *de jure* limited to a specific industry because each: (1) Is separately administered; (2) is separately negotiated at different times for different purposes; (3) covers different geographical areas; (4) uses individual plan-specific formulae which have no necessary relationship to differences in the types of commodities or markets; and (5) is separately funded. NPPC also states that the Tripartite Scheme for hogs is not "integrally linked" to other Tripartite stabilization schemes. NPPC submits that for the forgoing reasons, the Department should perform its specificity analysis at the level of the individual stabilization agreement as in *IPSCO, Inc.* v. *United States*, 687 F. Supp. 614, (U.S. Court of International Trade (CIT), 1988), hereinafter *IPSCO*, and *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407 (CIT 1989), hereinafter *Comeau Seafoods*. By its very terms, the Tripartite Scheme for hogs provides benefits only to hog producers. Accordingly, its benefits are *de jure* limited to a specific industry and are thus countervailable.

NPPC further argues that if the Department should decide to evaluate specificity at the level of Tripartite schemes collectively, Tripartite benefits viewed collectively remain *de jure* limited to a specific group of industries. In evaluating *de jure* specificity, NPPC argues, the Department must examine not only the relevant statute, but also any implementing regulations. In the case of Tripartite schemes, the implementing regulations are contained within the particular commodity-specific agreements. Considered collectively, these agreements explicitly limit benefits, *de jure*, to producers of nine commodities. Since the number of industries covered by Tripartite agreements constitute only a small portion of the vast agricultural sector, benefits under the collective Tripartite schemes are *de jure* limited to a specific group of industries and are thus countervailable.

CPC argues that Tripartite agreements are *de jure* generally available to any agricultural commodity in Canada. CPC states that the language of the Agricultural Stabilization Act (ASA) makes Tripartite agreements generally available to producers of "any natural or processed product of agriculture." The Tripartite Program does not act in law to limit the number of commodities that may be covered under agreements. The Department correctly conducted its specificity analysis at the level of the Tripartite enabling legislation, rather than at the level of the individual Tripartite Scheme for hogs.

In response to NPPC's argument that each individual Tripartite scheme has independent administrative control, CPC points out that Bill C–25 provides a framework for the implementation of each Scheme as part of the Tripartite Program, including basic principles for every agreement and arrangements for the scheme's administration and funding. CPC notes that to allege that there are no common requirements for the implementation of individual Tripartite scheme is to ignore the language of the statute, which contains a long list of requirements which must be specified in the agreement establishing each scheme. However, if Bill C–25 had required all of the scheme to be completely uniform, there would be a loss of comparable benefits among the various commodities, as each commodity is different and thus requires a scheme to be shaped to best fit that commodity producers' needs.

CPC argues that *IPSCO* and *Comeau Seafoods* provide no support for NPPC's view, and *Comeau Seafoods* specifically endorses the Department's level of analysis in this review. In these cases, the Department conducted its specificity analysis at the level of the individual subsidiary agreements negotiated pursuant to federal-provincial agreements. However, these federal-provincial agreements are not comparable to a statutory scheme such as Bill C–25 or the ASA. Therefore, argues CPC, there is no analogy between the federal-provincial agreements found in *IPSCO* and *Comeau Seafoods* and the statutory scheme of ASA/Tripartite, and therefore no basis to argue that the Department's level of analysis should be the individual Tripartite Scheme for hogs. Moreover, in *Comeau Seafoods*, the Court ruled that when the specificity test was applied properly, loans from the Fisheries Loans Boards were *de facto* nonspecific, because they were made as "part of an overall lending development policy administered through the Rural Development Loan Program"—in the same way that the Tripartite Scheme for hogs was negotiated as part of an overall Tripartite policy.

Department's Position: The Department determines that each product-specific scheme is structured pursuant to the enabling legislation and basic principles provided in Bill C–25, and, therefore, the implementing legislation and product-specific schemes are integral parts of the Tripartite Program. Although many aspects are specific to the individual schemes, the Department finds that these product-specific schemes exist, and operate, under the framework of the ASA and Bill C–25. The language of Bill C–25 does not limit the availability of these Tripartite programs to certain agricultural commodities or products. We therefore stand by our determination that the Tripartite program is not *de jure* specific. We have determined instead that the Tripartite program is *de facto* specific for the reasons enumerated in Comment 3.

Comment 2: NPPC argues that benefits under Quebec's Piglet and Feeder Hog Schemes are *de jure* limited to a specific industry. The Act Respecting Farm Income Stabilization Insurance (FISI Act) does not establish particular programs, nor does it prescribe a particular method for the stabilization of income with respect to covered commodities, but instead is a broad and vague authorization for the creation of various commodity-specific schemes, each with its own particular terms. NPPC states that the FISI Act: (1) Did not create a FISI Scheme and (2) did not provide for the administration and funding of a FISI Scheme; and that FISI Schemes (3) are separately created at

different times for different purposes; (4) provide different levels of support for reasons unrelated to differences in the types of commodities or markets; (5) are separately funded; and that the Feeder Hog Scheme and Piglet Scheme are not "integrally linked" to other FISI Schemes. Therefore, it is appropriate for the Department to perform its specificity analysis of FISI at the level of the particular scheme, and benefits under each scheme are *de jure* limited to a specific industry and are thus countervailable.

Furthermore, NPPC argues that FISI benefits remain *de jure* specific when analyzed at the collective level. In evaluating *de jure* specificity, the Department must examine not only the relevant statute but also any implementing regulations. Stabilization pursuant to the FISI Act is implemented through regulations, which establish each particular scheme. Each scheme specifies, by regulation, the manner in which benefits are calculated and paid and the class of eligible producers. These implementing regulations explicitly limit benefits, *de jure,* to producers of hogs, lambs, beef (slaughter cattle, feeder cattle, feeder calves (cow-calf)), apples, sugar beets, white pea beans and other dry edible beans (kidney, cranberry, and other colored beans). Accordingly, FISI benefits are *de jure* limited to those commodities for which a particular scheme has been established by regulation, and are thus *de jure* limited to a specific group of industries and countervailable.

The GOQ argues that NPPC arguments on FISI's *de jure* specificity contradict Department determinations, a CIT decision, as well as two decisions of a binational panel constituted under the Free Trade Agreement. (Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada (50 FR 25104; June 17, 1985), hereinafter *Pork; Alberta Pork Producers' Marketing Board* v. *United States,* 669 F. Supp. 455, 452 (CIT 1987); Memorandum Opinion and Order, In the Matter of Fresh, Chilled, and Frozen Pork, United States-Canada Binational Panel Reviews, USA–89–1904–06 at 79–80, September 28, 1990 and USA–89–1904–06 at 19–20, March 8, 1991). Furthermore, the GOQ states that to argue that FISI is *de jure* limited is to ignore the distinction set out by the CIT between *de jure* and *de facto* tests for specificity. In fact, argues the GOQ, the *de jure* test involves only an examination of statutes and regulations. Furthermore, the cases on which the NPPC relies to allege *de jure* specificity have nothing to do with the *de jure* test.

Lastly, the GOQ argues that FISI regulations must conform with the statute, authority for specific regulations must be specifically delegated to the administrative agency, and the regulations must have the full force of law, but always subject to the precise terms of the statute. Hence, the statute and its regulations must be taken together: the regulations have no force without the guiding statute, and the statute cannot be implemented without the regulations. Therefore, the GOQ submits that FISI is generally available according to the statute and regulations and confers equal benefits upon all users, and is thus *de jure* not specific.

Department's Position: The Department has consistently determined that FISI is not *de jure* limited to a specific enterprise or industry or group of enterprises or industries. The Department finds that the language of the FISI Act does not limit the availability of these programs to certain agricultural commodities or products. Although many aspects of FISI's implementation and administration are left to the specific schemes, the program exists and operates under the framework of the FISI Act, which is not limited statutorily to specific enterprises or industries.

Comment 3: CPC disagrees with the Department's finding that Tripartite is *de facto* specific, arguing that the Department has failed to consider all of the information provided by the Government of Canada, particularly the information provided during verification, and that, when all the facts are considered fairly, the Tripartite Scheme does not meet the "specificity test" set forth in § 355.43(b)(2) of the Department's proposed regulations, and is thus not countervailable.

CPC argues that the Department failed to properly apply the specificity test in this case by: (1) Focusing too narrowly on the number of commodities for which there already are finalized Tripartite agreements, rather than recognizing Tripartite as a relatively new program with an expanding number of plans (and thus penalizing hog producers for having been among the first commodities to complete a Tripartite agreement); (2) relying too heavily on the fact that 52 percent of the Tripartite payments made to participating producers went to hog producers, rather than examining payouts in the overall context of the program; (3) looking at Tripartite in a "snap-shot" fashion, focusing only on one year, when in fact payments to producers of one commodity will exceed payments to others in any given year; and (4) examining hog producers in a vacuum, making no attempt to define the universe in which dominant users (or disproportionate benefits) are to be measured.

NPPC states that CPC's arguments in this case are the same arguments that were rejected by the Department in *Pork;* the Department's determination with respect to the *de facto* specificity of the Tripartite program has been upheld by the U.S. - Canada binational panel in the *Pork* case which reviewed that determination (Memorandum Opinion and Order Regarding Commerce's Determination on Remand, Case No. USA–89–1904–06, March 8, 1991). NPPC further argues that claims made by CPC that variations in the support formulae for different commodities are "solely due to the economic circumstances of each commodity" run counter to the evidence, and that these variations show that different Tripartite plans adopt fundamentally different approaches and provide benefits which differ in kind from benefits under other plans, including plans for similar commodities.

NPPC further argues that the Department's findings of *de facto* specificity of the Tripartite programs would not change if the Department examined a period longer than one year, since it has been established that over 96 percent of all Tripartite payments arose during calendar year 1988.

In response to CPC's argument that although hog producers may have received 52 percent of all Tripartite payouts in the review period, these producers also made almost 50 percent of all producer contributions to Tripartite during the period, NPPC argues that the proportion of producer premiums paid into the fund is irrelevant to an analysis of disproportionality because the Department's concern is with the government monies paid to producers, not with the producers' own contributions. If the analysis of disproportionality requires any examination of contributions to the fund, the proper subject of analysis would be the contributions of governments, not the producers, and hog producers also benefitted disproportionately by this measure.

NPPC rejects CPC's assertion that Tripartite Schemes might be created in the future for other commodities as irrelevant to the Department's specificity analysis. Indeed, the pace at which new commodities are added is slowing, not accelerating. Also, the rejection of Tripartite Agreements for asparagus, sour cherries, and corn (See

Pork) remains relevant to the Department's specificity analysis.

Department's Position: In analyzing *de facto* specificity, the Department looks at the actual number of commodities covered during the particular period under review. There is general agreement that there are at least 100 commodities produced in Canada. However, despite Tripartite's nominal general availability to all commodities, the Annual Report of the Agricultural Stabilization Board for the fiscal year ending March 31, 1989, shows that there were only six Tripartite agreements in place, covering just nine commodities. Furthermore, hog producers received 52 percent of the total payouts made under the six Tripartite Schemes in the review period. Since Tripartite's inception, 51 percent of all Tripartite payments made to all schemes have gone to hog producers. Although CPC argues that there are other Tripartite Schemes under negotiation (and honey and onion negotiations have been completed after the review period) we have no authority to take into account predictions about the future growth of the Tripartite Stabilization Plan. During the review period the program was limited, *de facto,* to a specific group of enterprises or industries, and is therefore countervailable.

Comment 4: CPC, Quintaine, and Pryme argue, in separate briefs, that the Alberta Crow Benefit Offset Program (ACBOP) is not a countervailable subsidy because benefits that compensate partially for disadvantages caused by a related government program are not countervailable. Furthermore, because the average Crow Benefit payment is twice the amount of an ACBOP payment, Alberta's program only partially offsets the artificially high price paid for grain. CPC adds that if the Department does countervail ACBOP benefits, it must correct an error in its calculation methodology.

Pryme and CPC argue that the Department has found no countervailable subsidy exists when the benefits of one governmental program merely counteract the disadvantages of a related program, thus resulting in no overall "economic benefit" (Certain Steel Products from the Federal Republic of Germany, 47 FR 39345; September 7, 1982, hereinafter German Steel). A parallel situation exists in this review: ACBOP is "inseparably linked" with the Crow Benefit payments made under the Western Grains Transportation Act (WGTA). Because ACBOP does not completely correct the price distortion, grain purchasers in Alberta remain at a disadvantage. In the 1986/88 administrative reviews of Live Swine, the Department assumed that it would be possible for Alberta livestock producers to purchase less expensive feed grains from outside Alberta. In fact, WGTA and its grain price enhancement effect applies to the entire western Canada grain-producing region, putting grain purchasers in Alberta at a competitive disadvantage. ACBOP removes part, but not all, of that disadvantage, and there is therefore no subsidy for the Department to countervail.

Pryme argues that if any benefit does flow to hog producers, that benefit goes to an input, and the Department must conduct an upstream subsidy investigation. And only after an affirmative "threshold determination" may Commerce proceed with an upstream subsidy investigation. Unless and until an upstream subsidy investigation is carried out, the benefit, if any, to hog producers from the ACBOP cannot be measured.

CPC argues that the methodology used by the Department to calculate the amount of benefit contains a significant error. CPC argues that the Department should have considered industry standards that 3.5 pounds of livestock feed will be necessary to produce 1 pound of weight gain, and that 15–18 percent of this livestock feed is made up of protein supplement, not feed grain. By asserting that 3.5 pounds of grain, not feed, is required to produce 1 pound of weight gain, the Department has significantly overstated the amount of grain consumed by hogs in Alberta. Also, the Economic Indicators of the Farm Sector publication used by the Department is not a valid document for the purpose for which it has been used by the Department. It provides cost of production information for American Farmers, not Canadian farmers, and higher U.S. hog weights increase the feed-grain to weight-increase ratio. Therefore, the Department should revise its calculations, using a document provided at verification containing Canadian industry standards.

NPPC argues that the Department has previously rejected the same arguments on the countervailability of ACBOP in Pork and that the 0.2. - Canada binational panel also rejected CPC's and other Canadian parties' claims that the ACBOP was not countervailable, thus rejecting the German Steel argument as it applies to this case. NPPC adds that neither CPC nor Pryme have attempted to show that the Department's decision was erroneous or that the Panel's determination is not intrinsically persuasive.

Department's Position: We agree with the NPPC. Unlike the Special Canada Grains Program, this program is not tied to grain production; it is limited to feed grain users and merchants. Therefore, we have determined that it is countervailable. The fact that a program is designed to offset the economic effect of another government program or policy does not exempt it from investigation under the countervailing duty law. We reject respondents' claim that this program is analogous to German Steel. In that investigation, the German government chose to impose an import ban on coal and to subsidize coal production. We found no countervailable benefit to steel producers resulting from the coal subsidy because the price that steel producers were paying for coal was higher than the world price. Since the German Steel determination, we have adopted an upstream subsidy analysis, which would now be applied to determine whether benefits to coal producers passed through to steel producers. In this review, the benefit is paid directly to grain users and not to grain producers. Thus, there is no need to conduct an upstream subsidy analysis. Payments under the ACBOP are not part of a comprehensive program relating to the input product, but rather are received directly by the hog producers. Therefore, Commerce is not required to conduct an upstream analysis, and we reasonably determined that compensation under the ACBOP confers a countervailable benefit on Alberta hog producers.

Concerning CPC's argument that the Department should change its methodology when calculating the amount of benefit hog producers receive from the ACBOP, we determine that the source used by the Department, Economic Indicators of the Farm Sector, a U.S. Department of Agriculture (USDA) document, provides similar information to verbal information provided during verification. We used the information found in the USDA document as the best information available because the information on the record was inadequate. Upon our return from verification, CPC provided a document titled Nutrient Requirements of Swine, also a U.S. publication, from the National Research Council. The document provided an inadequate basis for calculating the amount of benefit for the following reasons: (1) The document does not provide usable information on the amount of protein supplement added to the cereal grain feed since it provides a chart showing the required percentage of dietary protein without specifying

whether that percentage is in addition to or inclusive of the percentage of protein naturally contained in the cereal feed; and (2) the listed grain consumption to weight grain-ratios are calculated in hog weight steps of 10–20 kilos, 20–50 kilos, and 50–110 kilos, with no indication of the time periods hogs remain in each weight stage, so no weighting of stages is possible. By contrast, the document used by the Department provides one grain to weight-gain ratio (346.3 lbs. of grain to 100 lbs. of weight gain), and lists separately protein supplements as well (81.2 lbs. of supplements for each 100 lbs. of weight gain).

For these reasons, we continue to base our final calculations on the USDA document, although we have made an adjustment in our ratio, from 3.5 pounds of grain for each 1 pound of weight gain to 3.483 pounds of grain for each 1 pound of weight gain to more accurately reflect the information as presented in Economic Indicators of the Farm Sector. This change in our methodology does not change the calculated benefit of Can$0.0042/lb. for all live swine.

Comment 5: CPC argues that the Feed Freight Assistance Program (FFA) is not a countervailable subsidy, because any benefit that accrues to livestock producers from this program is incidental, and that before the Department can impose a countervailing duty it must determine that a government "is providing a subsidy with respect to the manufacture, production or exportation of a class or kind of merchandise imported into the United States." (See 19 U.S.C. 1671(a)). FFA benefits are provided with regard to the manufacture of feed from grain, with no evidence that the grain is imported into the United States. CPC further argues that to countervail benefits paid to producers of feed grain for livestock, the Department would have to conduct a separate investigation.

NPPC argues that the same arguments with respect to FFA were considered and rejected by both the Department and the FTA Panel in Pork.

Department's Position: In the preliminary results, we determined that this program is countervailable because it is limited to a specific enterprise or industry, or group of enterprises or industries. The Department countervailed only the amount of FFA benefits paid to livestock producers who have indicated that they raise hogs. FFA benefits, in the form of reduced costs for feed, result in a direct reduction in the cost of production of hogs. Therefore, the Department is not required to conduct an upstream subsidy investigation under section 771(A) (See, United States-Canada Binational Panel Review of Fresh, Chilled and Frozen Pork, Secretariat File No. USA–89–1904–06, September 28, 1990, at page 57). This rationale has been consistently applied in previous reviews of this order. In this review, CPC submitted no new information. Therefore, the Department's determination remains unchanged.

Comment 6: CPC argues that the Department has erroneously calculated the countervailing benefit to swine resulting from the Ontario Farm Tax Rebate Program, using total rebates paid to swine producers in all of Ontario, rather than viewing the program as a regional subsidy within the Province. CPC believes the Department should have countervailed only the benefit to farmers in eastern and northern Ontario whose annual output is at least Can$5,000 but less than Can$8,000, as the Department has done in the past.

NPPC argues that because the program is limited to specific, scheduled commodities, the program is *de jure* limited to a specific group of industries and provides countervailable benefits to all recipients, not just those in the favored region.

Department's Position: We agree with CPC that this program provides a regional subsidy and that only the benefit to farmers in eastern and northern Ontario whose annual output is at least Can$5,000 but less than Can$8,000 is countervailable. We have adjusted our calculations accordingly. As a result of this change, the benefits from this program during the review period are significantly less than Can$0.0001/lb., which is effectively zero, for both sows and boars and other live swine.

Comment 7: CPC argues that the British Columbia Farm Income Insurance Program (FIIP) is generally available to producers of any viable commodity with an interest in, and a demonstrated need for, such a program, with no evidence of selective treatment in the establishment of schemes, and is therefore not a countervailable program as it pertains to benefits to hog producers. CPC argues that although only 36 percent of farm cash receipts in B.C. are covered by FIIP (for potatoes, vegetables, apples, other tree fruits, strawberries, other berries and grapes, cattle, calves, hogs, sheep and lambs), almost another 40 percent are covered by federal supply management programs (dairy, poultry and eggs), another 3 percent are covered by crop insurance or the Western Grains Stabilization Act (grains and oilseeds), and almost another 4 percent (honey and grapes) are covered by crop insurance. Therefore, argues CPC, approximately 82–83 percent of the farm cash receipts for the province are provided by commodities participating in one of these various programs, with the remainder being too profitable for their producers to be interested.

CPC argues that finding FIIP countervailable because it is only available to farmers producing commodities specified in the Schedule B guidelines (to the Farm Income Insurance Act of 1973), as the Department did in its Preliminary Results, is incorrect. CPC states that this is not evidence of selective treatment because commodities have been added to, and removed from, Schedule B since the statute authorizing FIIP was promulgated in 1973. Therefore, there is no evidence to support the Department's assertion that benefits provided under the FIIP are not generally available.

NPPC argues that the countervailability of FIIP was affirmed by the CIT in *Alberta Pork,* and that CPC's arguments are without merit.

Department's Position: We disagree with CPC's first argument because it is our view that crop insurance and supply management are sufficiently different so as to make the linkage with FIIP inappropriate. Crop insurance protects against climatic disasters, while FIIP is an income stabilization program. As noted by the March 8, 1991 U.S.—Canada binational panel decision in Pork, supply management type programs tend to restrict production, while income stabilization programs tend to encourage production. Therefore, it is inappropriate to link FIIP to crop insurance or to supply management programs.

Even though raspberries were removed from participation in FIIP in 1985 and potatoes were added in 1983, the Department finds these changes in Schedule B insufficient to counter evidence of selective treatment. By CPC's own admission, only 36 percent of British Columbia's farm cash receipts are covered by FIIP. The program is only available to farmers producing commodities specified in the Schedule B guidelines to the Farm Income Insurance Act of 1973 (with a limited number of agricultural products listed), and is therefore limited to a specific group of enterprises or industries, and therefore countervailable.

Comment 8: CPC argues that the British Columbia Feed Grain Market Development Program is not countervailable because it attempts to counteract the disadvantage caused by the Western Grains Transportation Act. As in the German Steel case, this program was designed solely to

counteract the competitive disadvantage caused by a related governmental program. The B.C. Feed Grain Market Development Program was an attempt to encourage grain producers in B.C. to sell their grain in the province, rather than exporting it, and to accomplish this it was necessary to offset the competitive advantage provided by the federal Crow Benefit payments. The Department has previously determined that no countervailable subsidy exists when the benefits of one governmental program merely counteract the disadvantages of a related program, and should thus make the same determination of no countervailable benefit as regards the B. C. Feed Grain Market Development Program.

NPPC argues that CPC's argument, identical to that used concerning the Alberta Crow Benefit Offset program, is no more persuasive in the context of the British Columbia Feed Grain Market Development program.

Department's Position: We disagree with CPC. The facts in this case differ from German Steel in that payments under the British Columbia Feed Grain Market Development program do not benefit the producers of the input product, but are received directly by the hog producers, therefore reducing their cost of production. We continue to find this program limited to grain producers and grain users in B. C., and thus limited to a specific group of enterprises or industries and therefore countervailable.

Comment 9: Pryme argues that weanling pigs (weanlings) are a separate class or kind of merchandise, outside the scope of the present case, or, in the alternative, should at least be accorded a separate countervailing duty rate based on their minimal direct contact with the farm economy before being sold abroad to feeders. Pryme points out that the International Trade Commission's (ITC) definition of "live swine" was based on animals destined for immediate slaughter, and that a review of the ITC record shows that the inclusion of weanlings in the scope of this case cannot be justified. Furthermore, Pryme argues, with the adoption of the Harmonized System, weanlings are now classified separately from all other live swine for duty purposes, as "live swine, other, weighing less than 50 kg each." Accordingly, with the new tariff classification, weanlings can be easily segregated by weight.

Pryme notes that in Certain Steel Products from the United Kingdom (47 FR 35668; August 12, 1982), hereinafter Steel Products, the Department found that certain merchandise was held to be of the same class or kind as the goods which were originally investigated, but sufficiently different in its characteristics to merit a separate margin. Pryme argues that if the Department follows the same reasoning applied in that case, weanlings would be excluded from the scope of the order on live swine because weanlings have: (1) A different tariff classification; (2) dissimilar physical characteristics; (3) separate pricing mechanisms from that of live swine; (4) different buyer expectations; (5) distinguishable channels of trade; (6) different uses; (7) extensive processing after sale; and (8) are customarily categorized differently from live swine.

Pryme argues that if weanlings are not removed from the scope of this case, as the Steel Products case would imply, there can be no justification for applying alleged bounties or grants awarded to indexed slaughter hogs in calculating benefits received by weanlings. Furthermore, the Department did arrive at a separate rate for sows and boars in this case; the facts of the weanlings' situation should garner, at least, a similar finding leading to a separate countervailing duty rate based on the principles the Department applied to sows and boars in this proceeding.

Department's Position: We stand by the determination reached in our preliminary results that weanlings are within the scope of this order. Pryme did not request a separate rate for weanlings until its submission of a case brief. At that time, the Department deemed it inappropriate to delay the processing of the review to solicit the necessary information in order to determine whether it is appropriate or possible to calculate a separate rate for weanlings in these final results. Based on the record, we have no way of determining how many weanlings were raised by, and exported from, each province, nor do we have complete knowledge of weanling producers' participation in the various programs.

The information presented in this review does not allow the Department to disaggregate the data between weanlings and other live swine. Weanlings are young hogs; in some cases, such as Ontario's implementation of the Tripartite Scheme for hogs, they are even specifically assigned a percentage of the program's overall benefits. We disagree with Pryme that in the Harmonized Tariff Schedule weanlings are classified separately from all other live swine for duty purposes. While weanlings certainly fall within HTS item number 0103.92.00, other live swine are also included under this subheading, since it encompasses "live swine, other, weighing 50 kg. or less each." Pryme's own definition of weanlings is the following: "(weanlings) are swine at the age when they are taken from their mothers and placed on diets of solid food to prepare them for market. They typically weigh 35 to 40 pounds (15.5 to 17.8 kg.) at the time of sale." The HTS subheading thus encompasses swine other than weanlings, because weanlings weigh no more than 17.8 kg., while the subheading covers swine weighing up to 50 kg. Therefore, the swine entering the United States under HTS 0103.92.00 may eat a solid diet of feed grains, and may receive benefits under many of the grain-related and other programs the Department has found countervailable.

Therefore, we will continue to allocate countervailable benefits over total live swine, including weanlings.

Comment 10: The GOQ argues that Quebec's Regional Development Assistance (RDA) program is not countervailable because all of the hogs benefitting from this program were slaughtered in Quebec, as verified and as dictated in Quebec's law. The transportation support under this subprogram is provided, by law, exclusively to move swine to Quebec slaughterhouses. In the Final Affirmative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware from Mexico, 51 FR 36447, 36449 (1986), and the Final Results of Countervailing Duty Administrative Review; Industrial Nitrocellulose from France, 52 FR 833, 836 (1987), the Department clearly held that support for products or merchandise that are not exported cannot be countervailed. Hence, Quebec's RDA program, and more particularly the Livestock Transportation subprogram, by law cannot be countervailed because it does not benefit the "manufacture, production, or exportation" of the merchandise that is under review. 19 U.S.C. 1671(a)(1)(B).

Department's Position: We agree with the GOQ that the Livestock Transportation subprogram of Quebec's RDA program is not countervailable, because it does not benefit merchandise that is exported, and have revised our calculations accordingly.

Comment 11: The GOQ argues that the Farm Building Improvements subprogram of Quebec's Productivity Improvement and Consolidation of Livestock Production Program is not countervailable: (1) Because the product benefitted is pork, not swine, as the swine are slaughtered by the farmers receiving the assistance; and (2) because it is not specific to an enterprise, industry, or group thereof. Furthermore, there is no evidence of targeting.

Therefore, the program satisfies both *de jure* and *de facto* tests.

Department's Position: The record does not support the GOQ's contention that all swine producers benefitting from the Farm Building Improvements subprogram of Quebec's Productivity Improvement and Consolidation of Livestock Production Program slaughter their swine on their premises, as opposed to selling the swine to slaughterhouses or exporters.

We also disagree with the GOQ's second argument that the subprogram is not specific to an enterprise, industry, or group thereof. This program is not available to all agricultural commodities. Rather, the program is limited to farm buildings housing livestock, and covers cow-calves, veal calves, cattle, sheep, hogs, pigs, livestock for dairy production, horses, rabbits, goats, and bees. Therefore, we continue to find the Farm Building Improvements subprogram of Quebec's Productivity Improvement and Consolidation of Livestock Production Program limited to a specific group of enterprises or industries, and therefore countervailable.

Comment 12: The GOQ argues that Quebec's Farm Income Stabilization Insurance (FISI) is not countervailable because it is neither *de jure* nor *de facto* specific to enterprises or industries. There is no allegation that Quebec's statutes or regulations limit access to FISI's benefits, or target beneficiaries. Therefore, there is no allegation of *de jure* specificity. The issue is whether the Department's evidence that the program covers fourteen producer groups, and that several major agricultural commodities are not covered under this program, warrants the conclusion that FISI is *de facto* specific.

The GOQ continues, arguing that the record contains ample evidence that FISI is not countervailable. For the review period, 74.4 percent of the total insured value of commercial farm production in Quebec was covered by FISI, with the verification report noting that 84.8 percent of the total value of agricultural production in Quebec is covered for risks related to price fluctuation (by FISI and supply management) or climatic disaster (by crop insurance). The record plainly shows that Quebec's insurance programs are comprehensive, generally available, and almost universally used.

The Department's argument that one reason for finding FISI countervailable is that eggs, dairy products, and poultry are not enrolled does not make note of the fact that producers of these products are governed by federally established marketing boards that limit market risk by managing supply. For this reason, these producers are not subject to price fluctuations, and have no need to pay for related insurance. They are, however, eligible to enroll in FISI, although they simply choose not to enroll.

The Department's argument that the program is countervailable because it provides benefits to only fourteen commodities does not take into account the fact that fourteen is a large number of commodities in Quebec, where climate and soil conditions limit agricultural diversity to approximately forty-five distinct products in the insurable agricultural sector. Fourteen very different commodities, ranging from piglets to barley, can hardly be classified as a specific group of enterprises or industries, especially when reviewing other Department decisions. The GOQ concludes by arguing that the Department should follow the decision of the U.S.-Canada Binational Panel in Pork, which, in two separate opinions, held that FISI is not *de facto* specific.

NPPC comments that the Panel's decision with respect to FISI appears to be based upon perceived deficiencies in the record and dissatisfaction with the Department's explanation of its findings. NPPC argues that the GOQ's statement that "for the review period, 74.4 percent of the total insured value of commercial farm production in Quebec was covered by FISI" is misleading. According to the Department's verification report, the fourteen commodities covered by FISI account for 30.9 percent (by value) of Quebec's total agricultural production, as reported by Quebec officials. Furthermore, NPPC argues that it is the number, not the relative value of each industry's annual production, that is relevant to the specificity analysis, and therefore the relative size of the industry is not an important criteria for analysis, as the GOQ suggests.

Department's Position: While we agree with the GOQ's statement that FISI benefits are not *de jure* specific (see Comment 2), we disagree with their argument that FISI benefits are not *de facto* provided to specific enterprises or industries.

In a province producing at least 45 commodities, FISI benefits are provided through 10 schemes covering only 14 commodities, and have been provided to the same 14 commodities since 1981, with no change in the commodities covered. Furthermore, according to information provided by the GOQ in its supplemental questionnaire response, and sourced from Quebec's Regie des Assurances Agricole's, these 14 commodities represent only 27 percent of the total value of agricultural production in Quebec.

The GOQ has relied on insured value figures when stating that 74.4 percent of the total insured value of commercial farm production in Quebec was covered by FISI. However, reliance on insured value figures understates the value of agricultural production in Quebec because not all products are insured.

When the GOQ states that 84.8 percent of the total value of agricultural production in Quebec is covered by a combination of FISI, supply management, and crop insurance, the GOQ links three separate commodity programs which are fundamentally different from one another in their operation and purpose. In fact, while crop insurance protects against climatic disasters, FISI is an income stabilization program; while supply management programs tend to restrict production, income stabilization programs tend to encourage production. For these reasons, we find it inappropriate to incorporate this linkage into our analysis, and we continue to consider FISI independently of the other insurance programs.

There have been prior inconsistent judicial decisions regarding the FISI program. The CIT affirmed the Department's finding of *de facto* specificity in a challenge to the investigation of Live Swine and Fresh, Chilled and Frozen Pork from Canada. *See, Alberta Pork Producers' Marketing Board* v. *United States,* 669 F. Supp. 445 (CIT 1987). On the other hand, the binational panel's decision regarding FISI in the *Pork* case was based on the Department's failure, for that period of investigation, to provide sufficient evidence to support a specificity finding. These two decisions were based on different administrative records and, in the case of Pork, a separate administrative case. These decisions are not controlling where the record of this fourth administrative review supports a finding of *de facto* specificity.

Based on the evidence on the record, we find FISI *de facto* specific to a group of enterprises or industries, and therefore countervailable.

Final Results of Review: After reviewing the comments received, we determine the net subsidy for the period April 1, 1988 through March 31, 1989 to be Can$0.0047/lb. for sows and boars and Can$0.0449/lb. for all other live swine.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of Can$0.0047/lb. on all shipments of sows and boars, and Can$0.0449/lb. on all shipments of all

other live swine, exported on or after April 1, 1988, and on or before March 31, 1988.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0047/lb. on all shipments of sows and boars, and Can$0.0449/lb. on all shipments of all other live swine, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22).

Dated: June 12, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

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National Oceanic and Atmospheric Administration

[P322B]

Marine Mammals; Application for Modification; Dr. Steven Katona

Notice is hereby given that Dr. Steven K. Katona, Allied Whale, College of the Atlantic, 105 Eden Street, Bar Harbor, Maine 04609 requested a modification of Permit No. 735 issued on April 22, 1991 (56 FR 19350), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

Permit No. 735 authorized the take by harassment while photographing and collecting biopsy samples from up to 500 fin whales and the export and import of tissue samples collected from fin whales in areas outside the United States by other researchers. The Permit Holder is requesting that the Permit be modified to allow the harassment of up to 50 minke whales (*Balaenotera acutorostrata*) over a 5-year period while photographing and collecting biopsy samples and the export of part of the samples to Denmark for DNA studies.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20901 (301/427-2289).

Director, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (508/281-9200).

Dated: June 14, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-14778 Filed 6-20-91; 8:45 am]

BILLING CODE 3510-22-M

[P77 #54]

Marine Mammals: Issuance of Permit; NMFS, Southwest Fisheries Science Center

On June 12, 1991, the Assistant Administrator for Fisheries issued an emergency permit pursuant to section 10(a)(1)(A) of the Endangered Species Act to authorize the lethal take of one adult male Hawaiian monk seal (*Monachus schauinslandi*) at French Frigate Shoals in the Northwestern Hawaiian Islands due to the animal's observed aggression that resulted in the deaths of several newborn pups. In accordance with 50 CFR 222.24(e), the Assistant Administrator waived the standard thirty day comment period due to the emergency nature of the permit request. The U.S. Marine Mammal Commission reviewed the permit application and recommended that the emergency permit be issued. Further, prior to permit issuance, several Hawaiian environmental groups were consulted. All agreed that the proposed taking was appropriate.

Since 1989, the French Frigate Shoals population of Hawaiian monk seals appears to have experienced a severe decline. Recent field data indicate a reduction of all age/sex classes except adult males. For example, from 1986 to 1989 the average number of pups born was 119 (range 108-127). In 1990, that number dropped to 92. Current field monitoring indicates the decline in the number of juveniles and subadults may be even more severe (on a percentage basis) than the decline in number of pups born.

Field biologists at French Frigate Shoals recently identified a single adult male Hawaiian monk seal that was associated with the deaths of at least four weaned pups. In addition, this animal was prevented from killing two additional pups by a field biologist observing the events. Prior to the requested lethal take of this individual, the field biologists were monitoring the animal on a 24 hour per day basis, but were unable to monitor or prevent mortalities that may have been occurring offshore. Assuming no unobserved pup deaths occurred, the observed pup deaths attributable to the identified adult male monk seal alone account for a minimum of five percent of this season's pup population. This excessive mortality not only reduces the current population at French Frigate Shoals, but also reduces the reproductive capacity of the population for the future.

Before lethal take authorization was requested or granted, nonlethal alternatives were considered and rejected. These alternatives included: (1) Injection with a testosterone-suppressing drug; and (2) capture and holding in a captive setting. It was considered unlikely that a testosterone-suppressing drug would reduce the aggressive behavior of this male because similar treatment on captive animals has shown an initial period of approximately two weeks during which blood testosterone levels increase. Further, the reduction of aggressive behavior via this method is only considered likely if the drug is given before the seasonal increase in blood testosterone levels that occur during the reproductive season. Hence, it was believed that drug treatment would not have the necessary effect within an acceptable time period. The second alternative was to capture and transport the animal to a captive holding facility. Past experience indicated that adult male monk seals are particularly

sensitive to capture stress. Thus, this animal would likely have succumbed as a result of capture, extended (albeit temporary) holding French Frigate Shoals, transport to a permanent holding facility, or adjustment to that facility. Due to the remote location of the island and other logistical constraints, the capture, holding and transport of this animal would have required more than a month of effort before the animal could be placed in a holding facility. A month-long delay in addressing this animal's aggression that resulted in alarming pup mortality rates was determined to be unacceptable. As a result, lethal injection was determined to be the single effective alternative.

The lethal take of the identified adult male Hawaiian monk seal was authorized on June 12, 1991. The objective of this authorized taking was to prevent further pup mortality due to the aggressive behavior of the subject animal. The animal was to be captured and restrained with a net and given an intramuscular or intravenous injection of the tranquilizer, diazepam (valium). After a suitable period to allow the tranquilizer to calm the animal, he was to be given a lethal intravenous injection of pentobarbital.

Notice is hereby given that on June 12, 1991, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued an emergency Permit authorizing the above taking for the purpose of enhancing the propagation and survival of the species. The taking was subject to the terms and conditions set forth in the Permit.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permit.

The application, Permit and supporting documentation are available for review by interested persons by appointment in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/413–6196).

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–14777 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 2, 1990, April 12 and 26, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 46238, 56 FR 14931 and 19352) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bottom Assembly, Crew Berth
1680–00–677–2060
Bag, Plastic
8105–LL–N89–0073
8105–LL–N89–0075
(Requirements of Norfolk Naval Shipyard, Portsmouth, VA)
Hood, Extreme Cold Weather
8415–00–472–4965

Services

Commissary Warehousing,
Lowry Air Force Base, Colorado
Janitorial/Custodial,
William Cotter Federal Building,
135 High Street,
Hartford, Connecticut
Janitorial/Custodial,
Buildings 33, 404, 499, 589, 20107, 20160, 20203, 21851 and 21852,
Kirtland Air Force Base, New Mexico
Restroom Cleaning,
Federal Center,
Buildings 1, 1A, lB, 2, 2A and 2C,
74 North Washington Avenue,
Battle Creek, Michigan

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–14831 Filed 6–20–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 22, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is

to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Seal, Metallic
5340-00-491-7632
5340-00-902-0426
Reel, Cable
8130-L9-015-3420
8130-L9-015-3520
Holder, Card Label
9905-00-045-3624
9905-00-045-3625
9905-00-782-3768

Services

Grounds Maintenance, Lexington Blue Grass Army Depot, Richmond, Kentucky
Janitorial/Custodial, Building 243 "A-G" Bay, McClellan Air Force Base, California
Janitorial/Custodial, Federal Building, 250 West Cherry, Carbondale, Illinois
Janitorial/Custodial, Federal Building and U.S. Courthouse, 250 West Cherry, Social Security Administration, 2700 N. Knoxville, Peoria, Illinois

Deletions

It is proposed to delete the following commodities from the Procurement List:

Commodities

Topper, Woman's
8410-01-187-9636
8410-01-187-9637
8410-01-187-9628
8410-01-187-9629
8410-01-187-9630
8410-01-187-9631
8410-01-187-9642
8410-01-187-9643
8410-01-187-9644
8410-01-187-96[illegible]
8410-01-187-9632
8410-01-187-9633
8410-01-187-9634
8410-01-187-9635
8410-01-187-9650
8410-01-187-9651
8410-01-187-9652
8410-01-187-9653
8410-01-187-9638
8410-01-187-9639
8410-01-187-9640
8410-01-187-9641
8410-01-187-965[illegible]
8410-01-187-965[illegible]
8410-01-187-9710
8410-01-187-9660
8410-01-187-9661
8410-01-187-9662
8410-01-187-9663
8410-01-187-9664
8410-01-187-9665
8410-01-187-9646
8410-01-187-9647
8410-01-187-9648
8410-01-187-9649
8410-01-187-9674
8410-01-187-9686
8410-01-187-9667
8410-01-187-9688
8410-01-187-9705
8410-01-187-9706
8410-01-187-9707
8410-01-187-9708
8410-01-187-9697
8410-01-187-9698
8410-01-187-9699
8410-01-187-9700
8410-01-187-9709
8410-01-187-9675
8410-01-187-9676
8410-01-187-9677
8410-01-187-9654
8410-01-187-9655
8410-01-187-9656
8410-01-187-9657
8410-01-187-9682
8410-01-187-9683
8410-01-187-9684
8410-01-187-9685
8410-01-187-9711
8410-01-187-9689
8410-01-187-9690
8410-01-187-9691
8410-01-187-9692
8410-01-187-9666
8410-01-187-9667
8410-01-187-9668
8410-01-187-9669
8410-01-187-9670
8410-01-187-9671
8410-01-187-9672
8410-01-187-9673
8410-01-187-9693
8410-01-187-9694
8410-01-187-9695
8410-01-187-9696
8410-01-187-9678
8410-01-187-9679
8410-01-187-9680
8410-01-187-9681
8410-01-187-9701
8410-01-187-9702
8410-01-187-9703
8410-01-187-9704
Pants, Woman's
8410-01-189-9909
8410-01-189-9910
8410-01-189-9911
8410-01-189-9912
8410-01-189-9913
8410-01-189-9914
8410-01-189-9915
8410-01-189-9919
8410-01-189-9920
8410-01-189-9921
8410-01-189-9916
8410-01-189-9917
8410-01-190-9274
8410-01-190-9271
8410-01-190-9272
8410-01-190-9273
8410-01-190-9276
8410-01-190-9277
8410-01-189-9918
8410-01-189-9922
8410-01-189-9923
8410-01-189-9924
8410-01-189-9925
8410-01-190-4257
8410-01-190-9278
8410-01-190-9279
8410-01-190-9280
8410-01-190-9281
8410-01-189-9926
8410-01-190-9275
8410-01-189-9927
8410-01-189-9928
8410-01-189-9929
8410-01-189-9930
8410-01-189-9931
8410-01-189-9932

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-14832 Filed 6-20-91; 8:45 am]

BILLING CODE 6820-32-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in cash settled short term (two year) U.S. Treasury note futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT cash settled short term U.S. Treasury note futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTAL INFORMATION: In addition to requesting comment on the terms and conditions of the proposed futures option contract, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's option rules. The petition requests exemptive relief from the trading volume tests for options on futures as set forth in Commission Rule 33.4(a)(5)(iii).

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on June 17, 1991.

Gerald Gay,

Director.

[FR Doc. 91–14767 Filed 6–20–91; 8:45 am]

BILLING CODE 6351-01-M

Commodity Exchange, Inc., Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Availability of the Terms and Conditions of Proposed Commodity Option Contract.

SUMMARY: The Commodity Exchange, Inc. (COMEX or Exchange) has applied for designation as a contract market in five day silver physical options. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the COMEX five day silver option.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTAL INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the COMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the COMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581, by the specified date.

Issued in Washington, DC on June 17, 1991.

Gerald Gay,

Director.

[FR Doc. 91–14766 Filed 6–20–91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet June 25, 1991 from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Arlington, Virginia. This session is closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: LT J. E. Williams (OP-213E), Pentagon, room 4D544, Washington, DC 20350, Telephone Number: (703) 697-8887.

Dated: June 19, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-14871; Filed 6-20-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as

required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 22, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 17, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Indian Student Eligibility Certification for Formula Grants to Local Education Agencies under the Indian Education Act of 1988.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 25,000.
Burden Hours: 6,250.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by local education agencies (LEAs) to provide information on a child's eligibility as an Indian to LEAs applying for Indian Education Act formula grants. The Department uses this information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Performance Report for Desegregation of Public Education Programs.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 63.
Burden Hours: 189.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This performance report is required to evaluate the performance of the grantee under the Desegregation of Public Education Programs. The Department uses the reports to monitor compliance with terms and conditions of grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Grants Under the Endowment Challenge Grant Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 500.
Burden Hours: 1,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies (SEAs) and non-profit institutions to apply for grants under the Endowment Challenge Grant Program. The Department uses the information to make grant awards.

[FR Doc. 91–14787 Filed 6–20–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 207(j) (5), Title 18, United States Code

Section 207(j)(5), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of section 207(a), title 18, United States Code, where a former employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Lewis E. Temple, Jr., who has been Director of the Construction, Environment, and Safety Division of the Office of Energy Research since May 1985, has a unique combination of outstanding qualifications in the field of nuclear engineering and in the management of construction projects. I am further satisfied that it will serve the national interest to permit him, in his capacity as Project Director for the Advanced Photon Source (APS), Argonne National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to management and direction of construction of the APS Project. I am satisfied that these activities are in a technical field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of section 207(a), title 18, United States Code, in consultation with the Director of the Office of Government Ethics, to permit contact by Dr. Temple with employees of the Department of Energy and other Government agencies with respect to management and direction of construction of the APS Project.

Dated: May 28, 1991.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 91–14842 Filed 6–20–91; 8:45 am]
BILLING CODE 6450–01–M

Financial Assistance to Colorado Center for Environmental Management, Technology/Regulation Integration Project

AGENCY: Rocky Flats Office, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a grant award.

SUMMARY: Based upon a determination made in accordance with 10 CFR 600.14(e)(1), the Department of Energy, Rocky Flats Office (DOE–RFO) gives notice of its plan to award a five year grant to the Colorado Center for Environmental Management (CCEM) for approximately $7,000,000. The pending award is in response to an unsolicited proposal submitted by CCEM in accordance with the Catalog of Federal Domestic Assistance program listing number 81.103. The purpose of the grant is to support the Technology/Regulation Integration Project to develop and assess alternative ways for achieving regulatory approval and effective citizen participation in the selection and deployment of innovative technological systems for the remediation of hazardous waste sites. The effort will involve several small and full-scale demonstrations in cooperation with local industry to test and evaluate emergent technologies.

FOR FURTHER INFORMATION CONTACT: Mariane Anderson, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402–0928, Purchase Requisition Number: 34–91RF00117.

Issued at Golden Colorado, June 11, 1991.

Robert M. Nelson, Jr.,

Manager.

[FR Doc. 91–14843 Filed 6–20–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance to the University of Cincinnati

AGENCY: U. S. Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with the University of Cincinnati.

TITLE: Low Temperature SO_2 Removal with Solid Sorbents in a Circulating Fluidized Bed Absorber.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a Grant based on unsolicited application submitted by the University of Cincinnati for "Low Temperature SO_2 Removal with Solid Sorbents in a Circulating Fluidized Bed Absorber."

SCOPE: The primary objective of the project is to achieve 70 to 90 percent SO_2 removals at relatively low temperatures in a Circulating Fluidized Bed Absorber (CFBA) using a toroidal nozzle design and by recycling the sorbent. This project will evaluate a CFBA using a calcium oxide (CaO) sorbent which is not extremely effective at low temperatures. However, introducing moisture using the novel nozzle design is believed to increase the reactivity of the CaO and SO_2, thus increasing the SO_2 removal efficiency.

A secondary objective of the proposed work is to obtain sufficient operating data on the toroidal nozzle design to perform a preliminary economic evaluation.

The University of Cincinnati is recognized for its experience in testing flue gas cleanup techniques and currently operates the test facility that will be utilized for this research. The existing facility consists of a gas heating system, flow control system, fluidized bed reactor, sorbent injection system, particle recycle system, gas sampling system, and temperature and pressure monitoring system. As a result, this project would require only construction and installation of the toroidal nozzle.

In accordance with 10 CFR 600.14 (D) and (E), the University of Cincinnati has been selected as a grant recipient. DOE support of this activity will benefit the public by providing increased knowledge of low temperature SO_2 removal from flue gas, a step preceding the transfer of the technology to industry in order to comply with stringent air emission standards. This activity is considered meritorious and is not eligible for financial assistance under a recent, current, or planned solicitation. DOE has determined that a competitive solicitation would be inappropriate.

The term of the grant is for a six-month period at an estimated value of $26,051. There will be no cost-sharing involved in this transaction; financial assistance will be provided by the Federal Government to the University of Cincinnati.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Karen S. Olean, Telephone: AC (412) 892–6202.

Dated: June 11, 1991.

Carroll A. Lambton,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–14844 Filed 6–20–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–32–NG]

Conoco Inc.; Application for Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 7, 1991, of an application filed by Conoco Inc. (Conoco) requesting blanket authorization to import and export up to a combined total of 50 billion cubic feet (Bcf) of natural gas, including liquefied natural gas (LNG), over a two-year period beginning with the date of first delivery. In its application, Conoco requested an amendment to its existing authorization contained in DOE/FE Opinion and Order No. 348 (Order 348), which gave blanket authority to Conoco to import from Canada up to 20 Bcf of natural gas over a two-year term that began with the company's first import on November 1, 1990. Should Conoco's new request be authorized, the new order would replace Conoco's existing authority under Order 348.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 22, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Conoco, a Delaware corporation whose principal place of business is in Houston, Texas, intends to import and export the natural gas either for its own account or for the accounts of others from and to any international market, subject to trade restrictions. The terms of each contract would be negotiated in response to market conditions. In addition, Conoco intends to use existing facilities for all imports and exports and states that it will submit quarterly reports detailing each transaction.

The decision on this application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import and export authority. The applicant asserts that imports and exports made under the proposed arrangement will be competitive and otherwise consistent with DOE import and export policy. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Conoco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 17, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–14845 Filed 6–20–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–35–LNG]

Enron Gas Liquids, Inc.; Application to Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application for blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 14, 1991, of an application filed by Enron Gas Liquids, Inc. (EGLI) requesting blanket authorization to import on a short-term or spot basis up to 200 billion cubic feet (Bcf) (or 200 trillion BTU) of liquefied natural gas (LNG) over a two-year period beginning with the date of first delivery. EGLI intends to use existing U.S. receiving facilities and to import LNG from a variety of international sources. EGLI states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 22, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: EGLI, a wholly owned subsidiary of Enron Corp., is a Delaware corporation with its

principal place of business in Houston, Texas. EGLI purchases, sells and imports LNG for resale to purchasers located in the United States. The applicant intends to import the LNG for its own account or for the account of others.

EGLI requests blanket authority to import LNG at each of the four U.S. receiving facilities (Distrigas—Everett, MA; Cove Point—Cove Point, MD; Elba Island—Elba Island, GA; and Lake Charles—Lake Charles, LA) whether or not such receiving facility is presently in operation. In its application, EGLI states that it understands that additional authority may be required from other governmental agencies. EGLI asserts that the import authorization would provide it the flexibility to negotiate numerous transactions, involving various international sources with which trade in natural gas has not been prohibited, under a single license. EGLI proposes to make its imported gas available to purchasers under contract terms that will be market-competitive and that will remain competitive throughout the contract period.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why the are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EGLI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 14, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secreary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–14846 Filed 6–20–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–30–NG]

Wes Cana Marketing (U.S.) Inc.; Application for Blanket Authorization to Import and Export Natural Gas

AGENCY: Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 2, 1991, of an application filed by Wes Cana Marketing (U.S.) Inc. (Wes Cana) for blanket authorization to import and export a combined total of up to 75 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period commencing with the date of first import or export. Although Wes Cana is primarily interested in importing and exporting natural gas from and to Canada, it also seeks authority to import and export natural gas, including LNG, from and to other countries. Wes Cana would import and export the natural gas on its own account and as agent for the accounts of others for sale on a spot market basis. Wes Cana would use existing facilities in transporting the proposed import and export of natural gas.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, July QQ, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585 (301) 353–3168.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S.

Department of Energy Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–0503.

SUPPLEMENTARY INFORMATION: Wes Cana is a U.S. corporation organized under the laws of the State of Delaware with its principal place of business in Calgary, Canada. Wes Cana, a wholly owned subsidiary of Saskatchewan Oil and Gas Corporation, is engaged as a gas marketing company in purchasing and reselling natural gas to various purchasers on a spot market or long term basis. Wes Cana states that, under the proposed authorization, natural gas would be imported and exported pursuant to contracts with terms of up to two years and anticipates that the price would not remain fixed in any of the contracts for a period of more than one year. Wes Cana also states that the price will be determined in arms length negotiations and will reflect the price and availability of competing fuels, including domestic natural gas. Wes Cana asserts that it will notify the DOE of the date of first delivery of natural gas imported or exported and will submit quarterly reports setting forth the details of each transaction.

Wes Cana is currently authorized to import up to 75 Bcf of Canadian gas under DOE Opinion and Order Nos. 138 and 138–A. Wes Cana intends the requested authorization to supersede its existing import authorization and is, therefore, requesting that its current authorization be terminated upon approval of the requested import/export arrangement.

In support of its application, Wes Cana states that the proposed imports will be competitively priced and the proposed exports will not be needed domestically over the course of the authorization. Further, Wes Cana asserts the export/import arrangement would remove artificial trade barriers and contribute to the overall efficiency of the North American gas market.

The application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–27. In reviewing a natural gas import application, the competitiveness of an import in the market served is the primary consideration in determining whether the proposed import arrangement meets the public interest requirements of section 3 of the NGA. In reviewing a natural gas export application, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their on trade arrangements. Parties that may oppose this application should comment in their responses on these matters as they may relate to the requested import or export authority. The applicant asserts that the import and export authority requested would be in the public interest because it would facilitate short-term and spot market transactions and promote competition in the gas marketplace. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316

A copy of Wes Cana's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 17, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–14847 Filed 6–20–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES90–47–001, et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Upper Peninsula Power Co., et al.

June 14, 1991.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. ES90–47–001]

Take notice that on May 30, 1991, Upper Peninsula Power Company ("Applicant") filed an amendment with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to increase the authorized amount of unsecured promissory notes from $12 million to $18 million for the

period August 1, 1991 through November 30, 1991 and to permit the proceeds to be used to redeem 23,700 shares of the Company's Cumulative Preferred Stock, 8% Series. All other terms and conditions as approved are to remain unchanged.

Comment date: June 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. SEMASS Partnership

[Docket No. ES91-38-000]

Take notice that on June 14, 1991, SEMASS Partnership ("SEMASS") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act seeking authority (1) to assume an obligation, with respect of up to $340 million in Resource Recovery Revenue Bonds to be issued by the Massachusetts Industrial Finance Agency, under a Loan, Security and Trust Agreement between SEMASS, the Massachusetts Industrial Finance Agency and State Street Bank and Trust Company and (2) to reallocate partnership interests among the existing partners of SEMASS in connection with additional capital contributions to be made by certain partners of SEMASS in the amount of up to $16 million.

Comment date: June 28, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14779 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-136-002]

Centra Pipelines Minnesota Inc.; Compliance Filing

June 17, 1991.

Take notice that on May 30, 1991, Centra Pipelines Minnesota, Inc. (Centra Minnesota), filed Second Revised Volume No. 2, Original Sheets Nos. 1 through 31, with a proposed effective date of October 16, 1991, to comply with the Commission's order issued May 15, 1991.

Centra Minnesota states that a copy of the compliance filing has been mailed to Centra Minnesota's two customers and the Minnesota Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14788 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR91-1-000]

Conoco Inc., Kerr-McGee Refining Corp., and Texaco Refining and Market, Inc. v. Williams Pipe Line Co.; Complaint Filed

June 17, 1991.

Take notice that on May 17, 1991, Conoco Inc., Kerr-McGee Refining Corporation, and Texaco Refining and Marketing, Inc. filed a Complaint pursuant to sections 9 and 13(1) of the Interstate Commerce Act against Williams Pipe Line Company in the above referenced docket.

The complaint requests the Commission, pursuant to sections 9 and 13(1) of the Interstate Commerce Act (ICA), to: (1) Find and declare that Williams' implementation of non-tariff charges is in violation of sections 1(5), 3(1), and 6 of the ICA and section 310.10 of the Commission's regulations; (2) order that Williams cease from further levying such non-tariff charges; (3) award reparations to the shippers equal to the total amount of the charges paid by each shipper, plus interest calculated in accordance with the Commission's regulations; (4) impose sanctions on Williams for violating section 6 of the ICA; and, (5) grant such additional relief as it deems appropriate.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 17, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14780 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10564-001 Alabama]

Edwards Energy Systems, Inc; Surrender of Preliminary Permit

June 17, 1991.

Take notice that Edwards Energy Systems, Inc., permittee for the Claiborne Hydropower Project located on the Albama River in Monroe County, Alabama, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 22, 1988, and would have expired on October 31, 1991. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on May 9, 1991, and the preliminary permit for Project No. 10564 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14782 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. ES91-36-000]

Application; Golden Spread Electric Cooperative, Inc.

June 17, 1991.

Take notice that on June 11, 1991, Golden Spread Electric Cooperative, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act seeking authorization to issue not more than $30 million of short-term securities on or before July 31, 1993, with a final maturity date no later than July 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR and 385.214). All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14786 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3967-2]

Preliminary Draft List of Categories and Subcategories Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA.

ACTION: Notice of availability of preliminary draft list of categories and Subcategories and Request for Information.

SUMMARY: This notice announces the availability of a preliminary draft of the list of categories and subcategories required under Section 112(c) of the Clean Air Act (CAA) as amended in 1990. The CAA requires that "a list of all categories and subcategories" (hereafter collectively referred to as categories) "of major sources and area sources * * *" (listed under section 112(c)(3)) of hazardous air pollutants (HAP's) be published within 1 year of enactment of the CAA Amendments of 1990. This notice provides the public with an opportunity to comment on the preliminary draft list of categories prior to the publication of the final list (scheduled to be published in November of 1991). Facilities within these categories of sources are potentially subject to emissions standards under section 112 of the CAA. The schedule for promulgation of these standards will be published within 2 years of enactment of the CAA Amendments of 1990. The identification of categories and subcategories of major sources in this preliminary draft listing has no bearing on whether any particular facility or grouping is a "source" for purpose of the early reductions program under Section 112(i)(5), or a "major source" for purposes of Section 112(a)(1). The term "major source" is defined under Section 112(a)(1) in such a way that it refers to the emissions occurring from a contiguous area under common control. By contrast, EPA must identify "categories and subcategories" of major and area source generically for the purposes of today's preliminary draft list and standard setting under Section 112(d). In most cases, this identification will be made as product or process oriented groupings which will not affect the definition of "source" for purposes of either the early reductions under section 112(i)(5) or the definition of a "major source" under section 112(a)(1). The definition of source in the early reduction program is described in Section II.B. of the Proposed Regulations Governing Compliance Extensions for Early Reduction of Hazardous Air Pollutants (June 13, 1991, 56 FR 27338). Today's draft list is not the final list that EPA will use as the basis for publishing the scheduling for promulgation of emission standards in November 1992.

The publication of a list of categories of major sources and area sources enables potentially affected sources, the public, and regulatory agencies to understand the scope of the HAP control program. Through this notice, the Agency solicits comment on the preliminary draft list of categories of major and area sources subject to standards. The Agency also solicits comment on the procedures used to develop this list, and alternative interpretations of the subject legislation.

DATES: *Comments.* Written comments must be received on or before July 21, 1991. Requests for extensions to this comment period are not anticipated to be granted, due to the limited time available for list publication.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attn: Docket No. A-90-49, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket. Docket No. A-90-49, containing supporting information used in developing the notice, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air Docket, room M-1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Robert E. Rosensteel, Chief, Chemical Manufacturing Section, Chemicals and Petroleum Branch (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5608; (FTS) 629-5608 concerning sources emitting organic pollutants, and Kenneth R. Durkee, Chief, Standards Documentation Section, Industrial Studies Branch (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5425; (FTS) 629-5425, concerning sources emitting inorganic pollutants. For general comments about this notice contact Tom Lahre, Pollutant Assessment Branch (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5668; (FTS) 629-5668.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA Amendments of 1990 [Pub. L. 101-549] require, under the revisions to section 112, that EPA evaluate and control emissions of HAP's. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP's. This notice outlines the procedures used to identify a list of categories of major sources and area sources of HAP's, and includes a preliminary draft list of such categories. The term "major source" as defined in paragraph 112(a)(1) to mean "any stationary source or group of stationary sources located within a contiguous area and under common

control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." The EPA may establish a lesser quantity of pollutant emissions for a major source than that specified in the previous sentence, based on various characteristics of the pollutant including potency, persistence, potential for bioaccumulation, or other relevant factors. The EPA may establish different criteria for a major source in the case of radionuclides. The term " area source," as defined in section 112(a)(2), means any stationary source of HAP's that is not a major source. Section 112(c) requires EPA to list "categories of major sources and area sources." Because most groupings of sources are based on process or product-oriented criteria, they may include a mix of both major and area sources. The distinction between categories of major and area sources is discussed in more detail below.

Section 112(b) of Title III includes a list of chemicals, compounds, or groups of chemicals. Section 112(c)(1) requires EPA to publish, within 1 year of enactment of the CAA amendments of 1990, a list that includes all categories of major sources of these HAP's. Section 112(c)(3) requires EPA to include on this list each category of area sources that EPA finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under section 112.

There are additional specific requirements for listing categories under section 112(c)(3) and section 112(c)(6). Section 112(c)(3) refers to the area sources strategy under section 112(k). This strategy requires, within 5 years of enactment of the CAA amendments, listing of categories of area sources which address 90 percent of the aggregate emissions of 30 HAP's. Section 112(c)(6) requires the listing of categories of sources which address 90 percent of the aggregate emissions of seven specific pollutants within 5 years of enactment of the CAA amendments. Although some of the categories that will be identified under these sections are probably already included on today's preliminary draft list, there are likely to be others which have not yet been identified due to a lack of data. The publication of today's draft list does not constitute completion of the requirements under section 112(c)(3) or section 112(c)(6).

Specific requirements are also provided for listing research facilities (section 112(c)(7)), boat manufacturing (section 112(c)(8)), and oil and gas wells and pipeline facilities (section 112(n)(4)).

The EPA must periodically, but no less often than every 8 years, in response to public comment or new information, revise, if appropriate, the list of categories. The EPA may at any time designate additional categories of HAP sources according to the same criteria as were applied to the initial list.

Under section 112(c)(9), the EPA may delete a category from the list, based on petition of any person or on the Administrator's own motion, whenever certain determinations are made. In the case of HAP's emitted by sources in listed categories that may result in cancer in humans, the EPA may delete a category if it is determined that no source in the category (or group of sources in the case of area sources) emits such HAP's in quantities which may cause a lifetime risk of cancer greater than 1 in 1 million to the individual in the population who is most exposed to such emissions. In the case of HAP's emitted by sources in the category that may result in adverse health effects in humans other than cancer or adverse environmental effects, the EPA may delete a category if no source in the category (or group of sources in the case of area sources) emits such HAP's in quantities that exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or group of sources in the case of area sources). The EPA shall grant or deny a petition to delete a category within 1 year after the petition is filed. Procedures for such petitions will be addressed in a separate **Federal Register** notice.

Section 112(c)(2) requires establishment of emission standards under section 112(d) for every category of sources included on the final list to be published under section 112(c)(1). The emission standards written for the categories listed under section 112(c) shall be promulgated according to the schedule for standards set forth in section 112(e). Section 112(e) requires EPA to determine the priorities for promulgating emission standards for listed categories under section 112(d). In determining such priorities, EPA shall consider the known or anticipated adverse effects of the emitted pollutants on health and the environment; the quantity and location of emissions; and the efficiency of grouping categories according to the pollutants emitted, or the processes or technologies used. A schedule establishing a date for promulgation of emission standards for each category of HAP sources is to be published in a separate **Federal Register** notice, after an opportunity for comment, within 24 months of enactment (i.e., by November 15, 1992).

A. Discussion of Major Issues

1. Categories and Subcategories: Section 112(d)(1) states that in establishing emission standards that EPA "may distinguish among classes, types and sizes of sources within a category or subcategory." The terms "category" and "subcategory" are not defined under section 112. The EPA has not distinguished categories from subcategories in today's preliminary draft list. Table 1, which is the preliminary draft list of categories, is arranged in large groups of industries. For some of these industry groupings, EPA has more data available to facilitate the identification of categories. For example, the air toxics emissions from the industry group identified as "Production of Synthetic Organic Chemicals" have been studied extensively and, therefore, many categories within this group have been identified. In this case, it may be useful to define the industry group as a category and to define all of the categories within this group as subcategories. For other industry groups, however, not as much is known about the processes involved and the resultant air toxics emissions. It is likely that further subdivision of many of the groups for which there is less information will be recognized as more data becomes available.

The issue of defining categories and subcategories is important in the development of the schedule of standards required under section 112(e). Section 112(e)(1) outlines a schedule for the promulgation of emission standards in groups that are to be promulgated within 2, 4, 7, and 10 years after enactment of the CAA amendments. This schedule is to be based on the "categories of sources initially listed for regulation pursuant to subsection (c)(1)." Today's notice announces the preliminary draft of the list of categories. The definitive list, which will form the basis for the schedule for standards, is scheduled to be published in November of 1991 after opportunity for comment for today's preliminary draft list. Once the definitive list is published, however, Section 112(e)(1) requires that the categories of sources "initially" listed are to be used to develop the schedule for promulgation of emission standards. This means that if the categories on this list are

subsequently divided into subcategories, all of these subcategories would have to be regulated on the same schedule (i.e., within either 2, 4, 7 or 10 years after enactment of the CAA amendments). If EPA intends to regulate various subcategories of a category at different times (e.g., regulate one subcategory within 4 years but other subcategories in the same category within 7 years), the subcategories need to be identified separately on the list of categories and subcategories to be published in November, 1991.[1] Due to a lack of information regarding characterization of industries, today's preliminary draft list may include categories which encompass multiple subcategories. The EPA is soliciting comment on the criteria for defining categories and subcategories. In addition, EPA is requesting information which could be used for the definition of subcategories for the groups of sources on today's preliminary draft list.

2. Listing of Categories of Area Sources: As noted above, section 112(c)(3) requires that EPA list categories of area sources that present "a threat of adverse effects to human health or the environment" warranting regulation under section 112. Categories of area sources may also be added to the list in satisfaction of the requirements of section 112(k)(3)(B) (area source strategy) or section 112(c)(6) (sources of specific pollutants). The showing required for listing categories of area sources under section 112(c)(3) would not apply to the additional requirements under these provisions.

The draft list of source categories which accompanies today's notice does not distinguish between categories or major and area sources and does not present specific findings in support of the presence of categories of area sources on the list. As described in the following section, the information used to develop this list is not sufficient to adequately determine whether individual facilities within listed categories exceed the major source definition (i.e., emission of 10 tons per year for one listed pollutant or 25 tons per year for a combination of listed pollutants or a lesser quantity for highly toxic pollutants). Although additional data are being gathered as well as solicited through this notice, the EPA anticipates that major information gaps will continue to exist by the November 15, 1991 statutory deadline for publication of the list of source categories. Several approaches are under consideration for addressing area source categories in the November listing. These include:

a. Constrain the initial list to categories of major sources and those categories of area sources that are sufficiently well characterized to permit findings of potential adverse effects threat. Additional categories of area sources would be subsequently added to the list on the basis of further study and a finding of potential adverse effects. Such a finding could be made at any time prior to or at the proposal of a relevant emission standard.

An example of a well characterized category which is composed of a majority of area sources is commercial ethylene oxide sterilization. Although there are some major sources within this category, the majority of the sources are, under the definition in the CAA amendments, area sources. The EPA has evaluated this category for regulation development for several years and has collected substantial information on the emissions, potential health impacts and control techniques available for commercial ethylene oxide sterilizers. Under this approach, the data available for commercial ethylene oxide sterilization would likely be sufficient to make the determination to include this category on the list, however, the nature of the specific finding necessary for listing would need to be defined (i.e., the data necessary to indicate the threat of adverse health effects). Although the ethylene oxide sterilization category provides an example of a well characterized category composed of mainly area sources, the amount of detailed information which exits for this category is not intended to represent the minimum necessary to make an adverse effects finding to support the listing of categories of area sources.

b. Make an interim finding that all categories of area sources are candidates for listing by virtue of their emissions of listed hazardous air pollutants. Remove any categories determined to be inappropriately listed through the source category deletion provisions in section 112(c)(9) as outlined previously.

Under this approach, all categories included in the November listing, whether composed of major or area sources, would be subject to emissions standards under section 112 unless deleted from the list prior to proposal of a relevant standard. The risk-based findings for deletion from the list (i.e., all facilities in the category pose lifetime cancer risk of less than 1 in 1 million for the most exposed individual and have a level of emissions which protects against other health and environmental effects with an ample margin of safety) would be operative for such deletions.

c. Develop a method for making the required finding for listing categories of area sources that is commensurate with the limitations of available data and apply the method comprehensively in the November publication. Approaches could include: evaluating the magnitude and nature of available data on constituent emissions, constructing a hazard or relative toxicity ranking of the pollutants emitted, or some combination of the above.

This approach would involve the development and application of criteria to support a finding of potential adverse effects required for the listing of categories of area sources. While a similar finding would also be needed for Approach a, under this approach the finding would be applied to all identified categories of area sources prior to the November publication of the list. Such a finding would be based on the limited data available supplemented by public comments prior to November. For example, if the finding were based, in part, on the magnitude of emissions of listed pollutants, the EPA would attempt to estimate the emissions for all identified categories of area sources in advance of the November publication of the list. In comparison to Approach a, the finding required for listing categories of area sources under this approach would likely be less rigorous given the time constraint of the November publication deadline. This approach, however, would result in a more comprehensive initial list than the approach envisioned under Approach a.

The EPA requests comment on these or alternative approaches to the incorporation of area sources in the category list. The EPA also requests comments on alternative methods for making the "threat of adverse effects" finding for listing categories of area sources under section 112(c)(3).

3. Utility and Solid Waste Incineration Categories: The listing of some categories of HAP-emitting sources is affected by other sections of the CAA. The regulation of electric utility steam generating units (above 25 megawatts electrical output, hereafter referred to as categories of utilities) under section 112 is dependent on the outcome of a study of this industry mandated under section 112(n)(1). The Agency is contemplating two alternatives for the listing of categories of utilities. The first alternative is to omit categories of

[1] Nothing in this notice or list shall limit EPA's authority to promulgate emission standards for an entire facility or portion thereof, regardless of the number of source categories and subcategories contained in that facility.

utilities from the list until such time as the conclusions of the section 112(n)(1) study indicate that these categories warrant regulation under section 112. This alternative, however, may appear inequitable because it would preserve the listing and regulation of other (potentially smaller) categories of non-utility boilers (e.g., industrial boilers) while omitting, at least until the completion of the section 112(n)(1) study, utility boilers. The second alternative is to include categories of utilities on the list until such time as the conclusions of the section 112(n)(1) study indicate that these categories do not warrant regulation under section 112. While this alternative would appear to be more equitable, it would require an action to delete the utility categories from the list if the section 112(n)(1) study concludes that these categories do not warrant regulation under section 112. Such a deletion action would be subject to the risk-based findings required under section 112(c)(9) (outlined above). Categories of utility boilers above 25 megawatts of electrical output have been omitted from today's preliminary draft list. The Agency is soliciting comment on the appropriate alternative to employ for the listing of categories of utilities.

An additional group of categories on the list which are affected by another CAA section are the solid waste incineration categories. Municipal waste combustors, medical waste incinerators as well as commercial and industrial waste incinerators are specifically addressed under the authority of section 129. The categories included on the list developed under section 112(c) are subject to regulation under section 112. Solid waste incineration categories subject to regulation under section 129 should not be listed under section 112(c). Municipal waste combustors, medical waste incinerators and general industrial solid waste incineration were omitted from today's preliminary draft list because these categories are specifically addressed under section 129. Due to a lack of data, however, there may be other categories on today's preliminary draft list which could be defined as categories of commercial or industrial solid waste incineration. The Agency is soliciting information on listed categories which are engaged in commercial or industrial incineration of solid waste as defined under section 129.

B. Identification of Categories

The preliminary draft list of categories is presented in Table 1. The section below describes the approach used for the development of today's preliminary draft list as well as the rationale for the use of this approach.

The general approach employed to identify categories of major and area sources was to identify all such categories associated with the emission of one or more of the listed HAP's. The basis for this approach originated from a review of the available data sources for this activity. There is no single comprehensive and complete source of information regarding the emissions of HAP's from industries in the United States. In addition, most of the data sources provide information covering only a limited range of industrial sectors (e.g., manufacturing). Some of these data sources are not specific to the listed air toxics or do not give source specific information regarding emission of HAP's. Given the relative paucity of available data and the need to be comprehensive in identification of categories of HAP-emitting sources, the approach employed herein was to identify and include in the preliminary draft list any category associated with the emission of one or more HAP's. The information sources available for this activity do not, in many cases, support a further breakdown of this list and, thus, today's notice does not distinguish between categories of major and area sources. In addition, for many of the industries identified, there were insufficient data to distinguish source categories from subcategories. It is envisioned that such refinements will be made as the EPA learns more about the listed categories either in the regulatory development process or through information submitted from the public.

Several sources of information were used to identify categories of sources emitting HAP's. A document entitled "Documentation for Developing the Source Category List" which catalogs the literature source(s) used to identify specific categories is included in the docket. The date sources used are described below:

1. The National Emissions Data System (NEDS) is an EPA data base of reported emissions from sources emitting more than 100 tons per year of criteria pollutants (U.S. EPA, 1988), including volatile organic compounds (VOC) and particulate matter (PM). (NOTE: In 1990, the NEDS system was replaced with a new EPA software system, the Facility Subsystem of the Aerometric Information Retrieval System (AFS). The 1985 NEDS data have been converted to AFS.) The sources included in NEDS are classified by unique identifiers, termed source classification codes. Speciation profiles have been assigned to each of the source classification codes. These speciation profiles are an estimate of the chemical species breakdown of the total VOC or PM constituents for a category. Species profiles from EPA's Air Emissions Species Manual were applied to the VOC and PM emission estimates in NEDS in order to identify if HAP emissions are associated with a particular source category. Species profiles offer a means of estimating the weight percent of specific pollutants in an emission stream based on knowledge of the type of source category and quantity of VOC or PM emissions. Species profiles have been developed by EPA for a number of purposes including the preparation of air toxics and acid precipitation emission inventories, receptor modeling and ozone strategy development. EPA has published species factors with assigned data quality rankings ranging from A to E. An "A" quality ranking indicates the highest quality profile, based on a composite of several tests and accepted analytical techniques, and can be considered representative of the total population of sources within a category. Conversely, an "E" quality ranking indicates the lowest quality profile, based on engineering calculations from only one source or perhaps simply based on engineering judgement, and may not be considered representative of the total population of sources within a category. EPA, in preparing today's draft source category list, using the NEDS data, only employed species profiles having data quality rankings of A, B, C and D. The use of profiles with a ranking of E was not considered appropriate because of the extreme uncertainty of the applicability of these profiles, even to a single source within a source category. Profiles with a quality ranking of D are based on measured emissions from a single source or engineering calculations from more than one source. The use of profiles ranked D and higher was considered appropriate because EPA believes a profile need only be representative of one or several sources within a category in order to qualify that source category for inclusion on today's draft list. EPA requests comment on this approach.

There are several limitations to the use of the NEDS estimates and speciation factors to identify categories of emission sources. First, States are only required to report data for sources emitting more than 100 tons per year of a criteria pollutant. Second, not all categories have been identified within the NEDS, especially many of the categories that produce or use organic chemicals. The NEDS emission profiles

generally were developed to aid modeling of criteria pollutants, not as a basis for a toxic pollutant inventory. Third, there is a lack of measured emissions data for many of the pollutant profiles listed in NEDS. For these reasons, other data sources were accessed to identify additional categories.

2. Categories of the synthetic organic chemical manufacturing industry (SOCMI) were identified from literature describing SOCMI reactants and products. A SOCMI category was listed if it either manufactured a chemical on the list of HAP's or if it used one or more of the listed HAP's to produce another chemical.

3. Published production and consumption data for organic chemicals were used to identify organic chemical end user processes emitting HAP's. There are a total of five general category groupings for which such data were used: foam blowing processes, process solvent use, polymerization processes, pesticide production, and pharmaceutical production.

Production and consumption data were obtained for each chemical from readily available literature. Each end use of a chemical was identified as a category.

4. The EPA's Toxic Release Inventory System (TRIS) was a fourth source that was used to identify HAP emitters. The TRIS data base contains emissions data reported by individual industrial facilities as required under section 313 of the Emergency Planning and Commuinity Right-to-know Act of 1986. Emissions data in TRIS are reported on a plant-wide basis. Standard Industrial Classification Codes are reported in TRIS but the entries are usually not specific enough to identify categories of sources. For this reason it is difficult to use the TRIS data base for identifying categories, or to determine where there is overlap between the TRIS data base and the methods described above. The TRIS data base did, however, identify plants emitting listed pollutants not identified through the methods described above. Where this was the case, a general "TRIS" category and the pollutant name was added to the list. Further work will be needed to identify the specific categories involved.

5. The list of categories developed by using the several data sources described above was augmented by reviewing existing studies by the EPA Office of Air Quality Planning and Standards. A major portion of this effort consisted of reviewing data developed in support of previous **Federal Register** notices describing previous section 112 regulatory decisions. For the most part, the methods described above had already identified most of the categories. However, in some cases additional categories were identified from these references and were added to the list.

II. Request for Comment

The EPA requests comment in the following areas:

1. Comment is requested on the appropriate distinctions EPA should make between categories and subcategories. In addition, information is requested for the division of listed groups of sources into categories and subcategories. All informaton supporting the definition of categories and subcategories should be accompanied by adequate supporting documentation.

2. Comment is requested on the appropriate approach to employ for the listing of categories of area sources and whether any source categories on the preliminary draft list are composed solely of area sources. The Agency also solitics comments on the specific findings required to fulfill the criteria for listing categories of area sources under section 112(c)(3) (i.e., threat of adverse effects to health or the environment).

3. Comment is requested on the scope and completeness of the preliminary draft of categories. Specifically, comments are requested on any additional or omitted categories or additional information about the categories on the preliminary draft list. All comments supporting the addition or removal of categories should be accompanied by adequate supporting information.

4. Comment is requested on the use of data bases noted above in identifying categories of sources as well as any additional data bases which could be used for this purpose. Comment is requested on categories and subcategories of sources included based on speciation profiles having a relatively poor quality ranking, as itemized and discussed in Table 1.

5. Comment is requested on the appropriate alternative for listing electric utility steam generating units.

6. Information is requested for the identification of categories engaged in commercial or industrial solid waste incineration as defined under Section 129.

III. Miscellaneous

Executive Order 12291 requires EPA to determine whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements. This notice was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

Dated: May 31, 1991.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

Table 1—Preliminary Draft List of Categories of Major and Area Sources of Hazardous Air Pollutants

Listed below are the categories of major and area sources associated with emission of one or more listed HAP's. For convenience, the list is organized by major industry groupings (e.g., polymers and resins production). The miscellaneous grouping contains categories which are not part of the other listed industry groups. The order of the categories within each industry group is based on the data bases used to develop this list not on their regulatory priority. Nothing in this notice or list shall limit EPA's ability to promulgate emission standards for an entire facility or portion thereof, regardless of the number of source categories and subcategories contained in that facility. A reference and a list of the HAP's associated with each category is included in the docket.

Industry Group—Fuel Combustion

Category Name

Industrial External Combustion Boilers
Institutional External Combustion Boilers
External Combustion Space Heaters
Industrial Electric Generation Turbines
Industrial Reciprocating IC Engines
Commercial/Institutional Turbines
Commercial Reciprocating IC Engines
Test Engine Aircraft
Test Engines—Turbine *
Test Engines—Reciprocating
Process Heaters
Secondary Metals Process Heaters
Petroleum Industry Process Heaters
Oil and Gas Steam Generation
Industrial In-Situ Fuel Use
Prescribed Burning
Residential Boilers
Residential Wood Combustion—Fireplaces

Residential Wood Combustion—Woodstoves

Industry Group—Metallurgical Industry: Nonferrous Metals

Category Name

Aluminum Production *
Primary Lead Smelting
Primary Metals—Miscellaneous*
Secondary Aluminum*
Secondary Copper*

Industry Group—Metallurgical Industry: Nonferrous Metals

Category Name

Battery Manufacturer: Non-Lead Types
Cadmium Refining
Lead Acid Battery Manufacturing
Non-Ferrous Alloys Production
Primary Copper Smelters
Secondary Metals—Miscellaneous
Zinc Smelting

Industry Group—Metallurgical Industry: Ferrous Metals

Category Name

Ferroalloys Production
Iron & Steel Manufacturing
Gray Iron Foundries
Steel Foundry
Coke by-Product Plants
Coke Ovens
Metal Shredding (Recycling)
Steel Pickling

Industry Group—Mineral Products Processing and Use

Category Name

Taconite Iron ore Processing*
Asphalt Concrete Manufacture
Brick Manufacturing
Cement Kilns*
Glass Manufacture*
Stone Quarries
Mining Operation—Sand/Gravel*
Metal Pipe Coating Asphalt/Coal Tar*
Asbestos Fabricating
Asbestos Manufacturing
Asbestos Milling
Asbestos Removal: Demolitions
Asbestos Removal: Renovations
Asbestos Waste Disposal: Demolitions
Asbestos Waste Disposal: Renovations
Construction: Spraying and Insulation
Asphalt Paving and Roofing Operations
Asphalt Processing
Automotive Transmission Plates Manufacturing
Brake Parts Manufacturing
Ceiling Tile Manufacturing
Friction Material Manufacturing
Mineral Dryers/Calciners
Mineral Wool Production
Ore Flotation
Refractories Production

Industry Group—Mineral Products Processing and Use

Talc Manufacturing
Vermiculite Manufacturing
Wool Fiberglass Manufacturing

Industry Group—Petroleum Refineries

Category Name

Petroleum Refining

Industry Group—Petroleum and Gasoline Production and Marketing

Category Name

Oil and Gas Production
Gasoline/Petroleum Storage
Petroleum Marketing (With Bulk Terminals and Plants)
Manganese Fuel Additives
Natural Gas Storage/Transmission
Oil Shale Retorting

Industry Group—Surface Coating Processes

Category Name

Fabric Printing
Surface Coating Operations—General Solvent Uses
Fabric Coating*
Paper Coating*
Large Appliance*
Magnet Wire*
Auto and Light Duty Truck
Metal Can*
Metal Coil*
Wood Furniture*
Metal Furniture*
Flat Wood Products*
Plastic Part*
Large Ship*
Large Aircraft*
Printing/Publishing
Architectural
Magnetic Tapes

Industry Group—Waste Treatment and Disposal

Category Name

Solid Waste Disposal-Open Burning
Sewage Sludge Incineration*
Municipal Landfills*
Groundwater Cleaning
Hazardous Waste Incineration
Tire Burning
Tire Pyrolysis
Cooling Water Chlorination-Steam Electric Generators
Wastewater Treatment Systems
Water Treatment Purification
Water Treatment-Boilers

Industry Group—Agricultural Chemicals Production and Use

Category Name

2,4-D Salts and Esters Production
4,6-Dinitro–O–Cresol Production
4-Chloro–2–methylphenoxyacetic Acid Production
Baygon (tm) Production
Captafol (tm) Production
Captan (tm) Production
Carbamate Insecticides Production
Chlorthalonil Production
Dacthal (tm) Production
Dichlorodiphenyltrichloroethane Production
Fumigation Use
Grain Fumigation Production
Metribuzin Production
Parathion Use
Pentachloronitrobenzene Production
Pentachlorophenol Production
R-11 (Butadiene Furfural-Cotrimer) Production
Sodium Pentachlorophenate Manufacture
Soil Fumigant Use
Space Fumigant Use
Substituted Phenyl Ureas Production
Thiocarbamates Production
Tordon Acid Production

Industry Group—Fibers Production Processes

Category Name

Acrylic Fibers/Modacrylic Fibers
Nylon Fibers
Rayon
Spandex
Triacetate Fibers

Industry Group—Food and Agriculture Industry

Category Name

Bakers Yeast Manufacturer
Coffee Roasting
Cotton Ginning
Prepared Food Manufacturing

Industry Group—Pharmaceutical Production Processes

Category Name

Pharmaceuticals Production

Industry Group—Polymers and Resins Production

Category Name

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene/Styrene-Acrylonitrile
Alkyd Resins Production
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers
Epichlorohydrin Elastomers
Epoxy Resins
Foamed Plastics
Formaldehyde Resins Production
Hypalon (tm) Production
Maleic Copolymers Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene

Methyl Methalcrylate-Butadiene Styrene Terpolymers
Methylcellulose Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nylon Plastics Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Plastics
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerization of Vinylidene Chloride
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polyurethane Foam
Polyurethane Production
Polyvinyl Acetate Emulsions
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastics
Styrene Butadiene Rubber and Latex Production

Industry Group—Production and Use of Inorganic Chemicals

Category Name

Aluminum Chloride
Aluminum Fluoride
Ammonium Phosphates
Ammonium Sulfate
Calcium Oxide Production
Carbon Black
Charcoal
Chemical Intermediate
Chlorine
Chromium Chemicals Manufacturer
Cyanuric Chloride
Detergent
Fertilizer Formulation and Use

Industry Group—Production and Use of Inorganic Chemicals

Category Name

Fluorides
Hydrochloric acid
Hydrogen cyanide
Hydrogen fluoride
Isopropanolamines
Manganese chemicals
Phosphate fertilizers
Phosphoric acid
Phosphorus pentasulfide production
Phosphorus production
Phosphorus trichloride/oxychloride production
Quaternary ammonium compounds production
Rocket engine fuel
Sodium cyanide production
Uranium hexafluoride production

Industry Group—Production of Synthetic Organic Chemicals

Category Name

Acenaphthene production
Acetaldehyde production
Acetaldol production
Acetamide production
Acetanilide production
Acetic acid production
Acetic anhydride production
Acetoacetanilide production
Acetone cyanohydrin production
Acetone production
Acetonitrile production
Acetophenone production
Acetyl chloride production
Acrolein production
Acrylamide production
Acrylic acid production
Acrylonitrile production
Adiponitrile production
Alizarin production
Alkyl anthraquinones production
Alkyl naphthalene sulfonates production
Allyl alcohol production
Allyl chloride production
Allyl cyanide production
Aminophenol (p-isomer) production
Aminophenol sulfonic acid (o,p-isomer) production
Ammonium thiocyanate production
Aniline hydrochloride production
Aniline production
Anisidine (o-isomer) production
Anthracene production
Anthraquinone production
Azobenzene production
Benzaldehyde production
Benzene production
Benzenedisulfonic acid production
Benzenesulfonic acid production
Benzil production
Benzilic acid production
Benzoic acid production
Benzoin production
Benzophenone production
Benzoyl chloride production
Benzyl acetate production
Benzyl alcohol production
Benzyl benzoate production
Benzyl chloride production
Benzyl dichloride production
Biphenyl production
Bis (chloromethyl) ether production
Bisphenol A production
Bromobenzene production
Bromoform production
Bromonaphthalene production
Butadiene (1,3-isomer) production
Butanediol (1,4-isomer) production
Butyl acrylate (N-isomer) production
Butylamine (N-isomer) production
Butylamine (S-isomer) production
Butylamine (T-isomer) production
Butylbenzyl phthalate production
Butylene glycol (1,3-isomer) production
Butyrolactone production
Caprolactam production
Carbaryl production
Carbazole production
Carbon Disulfide production
Carbon Tetrabromide production
Carbon Tetrachloride production
Carbon Tetraflouride production
Chloral production
Chloroacetic acid production
Chloroacetophenone (2-isomer) production
Chloroaniline (o-isomer) production
Chloroaniline (p-isomer) production
Chlorobenzaldehyde production
Chlorobenzene production
Chlorodifluoroethane production
Chlorodifluoromethane production
Chloroform production
Chloronaphthalene production
Chloronitrobenzene (1,3-isomer) production
Chloronitrobenzene (o-isomer) production
Chloronitrobenzene (p-isomer) production
Chlorophenols production
Chloroprene (2-chloro-1,3-butadinene) production
Chlorosulfonic acid production
Chlorotoluene (m-isomer) production
Chlorotoluene (o-isomer) production
Chlorotoluene (p-isomer) production
Chlorotrifluoromethane production
Chrysene production
Cresol (m-isomer) production
Cresols (o-isomer) production
Cresols (p-isomer) production
Cresols cresylic acid (mixed) production
Crotonaldehyde production
Cumene production
Cumene hydroperoxide production
Cyanamide production
Cyanoacetic acid production
Cyanoformamide production
Cyanogen chloride production
Cyanuric chloride production
Cyclohexane production
Cyclohexanol production
Cyclohexanone production
Cyclohexylamine production
Cyclooctadiene (1,5-isomer) production
Cyclooctadiene production
Decahydronaphthalate production
Di (2-methoxyethyl) phthalate production
Di-o-tolyguanidine production
Diacetoxy-2-butene (1,4-isomer) production
Diallyl phthalate production
Diaminophenol hydrochloride production
Dibromomethane production
Dibutoxyethyl phthalate production
Dichloro-1-butene (3,4-isomer) production
Dichloro-2-butene (1,4-isomer) production
Dichloroaniline (all isomers) production

Dichlorobenzene (1,4-isomer) (p-isomer) production
Dichlorobenzene (m-isomer) production
Dichlorobenzene (o-isomer) production
Dichlorodifluoromethane production
Dichloroethane (1, 2-isomer) production
Dichloroethyl ether production
Dichloroethylene (1, 2-isomer production
Dichlorophenol (2,4-isomer) production
Dichloropropene (1,3-isomer) production
Dichlorotetrafluoroethane production
Dicyanidiamide production
Diethanolamine production
Diethyl phthalate production
Diethylamine production
Diethylaniline (2,6-isomer) production
Diethylene glycol dibutyl ether production
Diethylene glycol diethyl ether production
Diethylene glycol dimethyl ether production
Diethylene glycol monobutyl ether production
Diethylene glycol ether monobutyl acetate production
Diethylene glycol monoethyl ether production
Diethylene glycol monoethyl ether acetate production
Diethylene glycol monohexyl ether production
Diethylene glycol monomethyl ether production
Diethylene glycol monomethyl ehter acetate production
Diethylene glycol production
Diisodecyl phthalate production
Diisooctyl phthalate production
Dimethyl benzidine (3.3-isomer) production
Dimethyl ether-N,N production
Dimethyl formamide (N,N-isomer) production
Dimethyl hydrazine (1,1-isomer) production
Dimethyl phthalate production
Dimethyl sulfate production
Dimethyl terephthalate production
Dimethylamine production
Dimethylaminoethanol (2-isomer) production
Dimethylaniline-N, N production
Dinitrobenzenes production
Dinitrophenol (2,4-isomer) production
Dinitrotoluene (2,4-isomer) production
Dioxane production
Dioxilane production
Diphenyl methane production
Diphenyl oxide production
Diphenyl thiourea production
Diphenylamine production
Dipropylene glycol production
Dodecyl benzene (branched) production
Dodecyl phenol (branched) production
Dodecylaniline production
Dodecylbenzene (N-isomer) production
Dodecylphenol production
Epichlorohydrin production
Ethanolamines (all isomers) production
Ethyl acetate production
Ethyl acrylate production
Ethyl benzene production
Ethyl chloride production
Ethyl chloroacetate production
Ethyl orthoformate production
Ethylamine production
Ethylaniline (N-isomer) production
Ethylaniline (O-isomer) production
Ethylcellulose production
Ethylcyanoacetate production
Ethylene dibromide production
Ethylene glycol diacetate production
Ethylene glycol dibutyl ether production
Ethylene glycol diethyl ether production
Ethylene glycol dimethyl ether production
Ethylene glycol monoacetate production
Ethylene glycol monobutyl ether production
Ethylene glycol monobutyl ether acetate production
Ethylene glycol monoethyl ether production
Ethylene glycol monoethyl ether acetate production
Ethylene glycol monohexyl ether production
Ethylene glycol monomethyl ether production
Ethylene glycol monomethyl ether acetate production
Ethylene glycol monooctyl ether production
Ethylene glycol monophenyl ether production
Ethylene glycol monopropyl ether production
Ethylene glycol production
Ethylene imine production
Ethylene oxide production
Ethylenediamine production
Ethylenediamine tetraacetic acid production
Ethylhexyl acrylate (2-isomer) production
Ethylnapthalene (2-isomer) production
Fluoranthene production
Formaldehyde production
Formamide production
Formic acid production
Fumaric acid production
Glutaraldehyde production
Glyceraldehyde production
Glycerol dichlorohydrin production
Glycerol production
Glycine production
Glyoxal production
Guanidine nitrate production
Guanidine production
Hexachlorobenzene production
Hexachlorobutadiene production
Hexachlorocyclopentadiene production
Hexachloroethane production
hexadiene (1,4-isomer) production
Hexamethylenetetramine production
Hexanetriol (1,2,6-isomer) production
Hydrogen cyanide production
Hydroquinone production
Hydroxyadipaldehyde production
Iminodiethanol (2,2-isomer) production
Isobutyl acrylate production
Isobutylene production
Isophorone nitrile production
Isophorone production
Isophthalic acid production
Isopropylphenol production
Lactic acid production
Lead phthalate production
Linear alkylbenzene production
Maleic anhydride production
Maleic hydrazide production
Malic acid production
Metanilic acid production
Methacrylic acid production
Methanol production
Methionine production
Methyl acetate production
Methyl acrylate production
Methyl bromide production
Methyl chloride production
Methyl ethyl ketone production
Methyl formate production
Methyl hydrazine production
Methyl isobutyl carbinol production
Methyl isobutyl ketone production
Methyl isocyanate production
Methyl mercaptan production
Methyl methacrylate production
Methylnapthalenes production
Methyl phenyl carbinol production
Methyl tert butyl ether production
Methylamine production
Methylaniline (N-isomer) production
Methylcyclohexane production
Methylcyclohexanol production
Methylene chloride production
Methylene dianiline (4,4-isomer) production
Methylene diphenyl diisocyanate production
Methylionones (A-isomer) production
Methylpentynol production
Methylstyrene (A-isomer) production
N-vinyl-2-pyrrolidine production
Naphthalene production
Naphthalene sulfonic acid (A-isomer) production
Naphthalene sulfonic acid (B-isomer) production
Naphthol (A-isomer) production
Naphthol (B-isomer)Naphtholsulfonic acid (1-isomer) production
Naphthylamine (1-isomer) production
Naphthylamine (2-isomer) production
Naphthylamine sulfonic acid (1,4-isomer) production
Naphthylamine sulfonic acid (2,1-isomer) production
Nitrilotriacetic acid production
Nitroaniline (M-isomer) production
Nitroaniline (O-isomer) production
Nitroanisole (O-isomer) production
Nitroanisole (P-isomer) production
Nitrobenzene production
Nitronaphthalene (1-isomer) production

Nitrophenol (4-isomer) (P-isomer) production
Nitrophenol (O-isomer) production
Nitropropane (2-isomer) production
Nitrotoluene (2-isomer) (O-isomer) production
Nitrotoluene (3-isomer) (M-isomer) production
Nitrotoluene (4-isomer) (P-isomer) production
Nitrotoluene production
Nitroxylene production
Nonylbenzene (branched) production
Nonylphenol production
Octene-1 production
Octylphenol production
P-tert-butyl toluene production
Paraformaldehyde production
Paraldehyde production
Pentachlorophenol production
Pentaerythritol production
Perchloroethylene production
Perchloromethyl mercaptan production
Phenanthrene production
Phenetidine (P-isomer) production
Phenol production
Phenolphthalein production
Phenolsulfonic acids (all isomers) production
Phenylenediamine (P-isomer) production
Phyloroglucinol production
Phosgene production
Phthalic acid production
Phthalic anhydride production
Phthalimide production
Phthalonitrile production
Picoline (B-isomer) production
Polyethylene glycol production
Polypropylene glycol production
Propiolactone (B-isomer) production
Propionaldehyde production
Propionic acid production
Propyl chloride production
Propylene carbonate production
Propylene dichloride production
Propylene glycol monomethyl ether production
Propylene glycol production
Propylene oxide production
Pyrene production
Pyridine production
Quinone production
Resorcinol production
Salicylic acid production
Sodium chloroacetate production
Sodium cyanide production
Sodium methooxide production
Sodium phenate production
Stilbene production
Styrene production
Succinic acid production
Succinonitrile production
Sulfanilic acid production
Sulfolane production
Tartaric acid production
Terephthalic acid production
Tert-butylbenzene production
Tetrabromophthalic anhydride production
Tetrachlorobenzene (1,2,4,5-isomer) production
Tetrachloroethane (1,1,2,2-isomer) production
Tetrachlorophthalic anhydride production
Tetraethyl lead production
Tetraethylene glycol production
Tetraethylenepentamine production
Tetrahydronapthalene production
Tetrahydrophthalic anhydride production
Tetramethylenediamine production
Tetramethylethylenediamine production
Thiocarbanilide production
Thiourea production
Toluene 2,4-diamine production
Toluene 2,4-diisocyanate production
Toluene diisocyanates (mixture) production
Toluene production
Toluenesulfonic acids (all isomers) production
Toluenesulfonyl chloride production
Toluidine (O-isomer) production
Trichloroaniline (2,4,6-isomer) production
Trichlorobenzene (1,2,4-isomer) production
Trichloroethane (1,1,2-isomer) production
Trichloroethylene production
Trichlorofluoromethane production
Trichlorophenol (2,4,5-isomer) production
Trichlorotrifluoroethane (1,2,2 -1,1,2 isomer) production
Triethanolamine production
Triethylamine production
Triethylene glycol dimethyl ether production
Triethylene glycol monomethyl ether production
Triethylene glycol production
Trimethylamine production
Trimethylcyclohexanol production
Trimethylcyclohexanone production
Trimethylcyclohexylamine production
Trimethylopropane production
Trimethylpentane (2,2,4-isomer) production
Tripropylene glycol production
Vinyl acetate production
Vinyl chloride production
Vinyl toluene production
Vinylcyclohexene (4-isomer) production
Vinylidene chloride production
Xanthates (potassium ethyl xanthate) production
Xylene (M-isomer) production
Xylene sulfonic acid production
Xylenes (mixed) production
Xylenes (O-isomer) production
Xylenes (P-isomer) production
Xylenol production

Industry Group—Miscellaneous

Category Name

Asphalt roofing manufacture
Pulp & paper production
Plywood/particle board manufacture*
Sawmill operations*
Tire production
Dry cleaning (petroleum solvent)
Dry cleaning (chlorinated solvents)—coin operation plant
Dry cleaning (chlorinated solvents)—coin operation self
Dry cleaning (chlorinated solvents)—commercial
Dry cleaning (chlorinated solvents)—industrial
Cold degreasing
Fabric dyeing*
Solvent extraction processes
Acrylic sheeting production
Aerosols production
Anesthetics
Benzyltrimethylammoniumchloride production
Boat building
Butadiene cylinders, lab testing
Butadiene dimers production
Chelating agents production
Chlorinated parafins production
Chloroneb production
Chromium electroplating
Comfort cooling towers
Commercial sterilization facilities
Conveyorized degreasing
Deodorant production
Disinfectants production
Dodecanedioic acid production
Dyes and pigments production
Electric wiring
Electronics manufacture
Ethylidene norborne production
Explosives production
Flame retardant production
Hospital sterilizers
Hydrazine production
Industrial cooling towers
Industrial process aids-enhanced oil recovery
Ion exchange resins production
Jet fuel deicer use
Leather tanning
Lube oil additives
Lub oil dewaxing
Moth repellant
Oil/gas well acidizing
Open top vapor degreasing
Other electroplating
Paint removers use
Paints, coatings & adhesives: manufacture & use (other than surface coating)
Phosphate esters production
Photographic chemicals manufacture
Photographic film processing
Phthalate plasticizers production
Polymerization inhibitors use
Resins catalyst production
Rubber antioxidants production
Rubber cement manufacturing
Rubber chemicals production
Semiconductors manufacturing

Surface active agents production
Symmetrical tetrachloropyridine process
Synthetic tanning agents production
Vinylidene chloride copolymer fabrication
Wood preservation—direct use

Industry Group—Production and Use Activities (TRIS)

Category Name

1,1,2,2,-Tetrachloroethane
1,1-Dimethyl hydrazine
1,2,4-Trichlorobenzene
1,2-Epoxybutane
1,2-Propylenimine
1,3-Dichloropropene
1,3-Propane sultone
1,4-Dioxane
2,4,6-Trichlorophenol
2,4-D Salts and esters
2,4-Dinitrophenol
2,4-Dinitrotoluene
2,4-Toluene diamine
2-Chloroacetophenone
3,3-Dichlorobenzidene
4,4-Methylene bis
4,6-Dinitro-o-cresol, and salts
4-Aminobiphenyl
4-Nitropropane
Acetamide
Acetonitrile
Allyl chloride
Antimony compounds
Benzotrichloride
Beryllium compounds
Bis (2-ethylhexyl) phthalate
Bis (chloromethyl) ether
Calcium cyanamide
Captan
Carbaryl
Carbonyl sulfide
Catechol
Chlorambden
Chlordane
Chlorobenzilate
Chloromethyl methyl ether
Cobalt compounds
Cresols/cresylic acid (isomers and mixture)
Dibenzofurans
Dichloroethyl ether
Dichlorvos
Diethanolamine
Diethyl sulfate
Dimethyl sulfate
Ethyl carbamate
Ethylene imine
Ethylene thiourea
Heptachlor
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclopentadiene
Hexachloroethane
Lindane (all isomers)
Mercury compounds
Methoxychlor
Methyl hydrazine
Methyl iodide
Methyl isocyanate
N,N-Diethylaniline
O-Anisidine
O-Toluidine
P-Phenylenediamine
Pentachloronitrobenzene
Polychlorinated biphenyls (aroclors)
Propoxur
Quinone
Styrene oxide
Titanium tetrachloride
Trifluralin
Vinyl bromide
Vinylidene chloride

*These source categories and subcategories were considered for inclusion on this draft list based, in part, on speciation profiles of relatively poor quality ranking (i.e., they are based on measured data from a single facility or process or from a number of facilities or processes based on engineering calculations).

[FR Doc. 91-14735 Filed 6-20-91; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3967-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 3, 1991 through June 7, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J65177-MT Rating LO, Turkey Salvage Timber Sale and Road Construction, Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT.

Summary: EPA has no objection to the Lewis and Clark National Forest's preferred alternative.

ERP No. D-AFS-K65131-AK Rating EC2, Starfish Timber Sale, Implementation Analysis, section 404 Permit, Tongass National Forest, Etolin Island, Stikine Area, AK.

Summary: EPA is concerned about the potential effect of the action alternatives on water quality and fisheries. Additional information is needed on monitoring and mitigation.

ERP No. D-BLM-L67027-ID Rating EC2, Stone Cabin Open Pit Gold and Silver Mine Development and Operation, Plan of Operations Approval and NPDES Permit Issuance, Florida Mountain, Boise District, Owyhee County, ID.

Summary: EPA's environmental concerns are based on the potential for acid or toxic drainage, the adverse water quality effects on a "special resource water", effects on redband trout a Federal Candidate 2 species and wetland impacts. Additional information is needed to better describe the proposed acid mine drainage mitigation, measures to minimize nonpoint source pollution, the effectiveness of mitigation measures in general, and the wetland communities and their functions and values.

ERP No. D-COE-E36168-FL Rating EC2, Central and Southern Florida Project, Flood Control and Canal 51-West End, Control Structures 155A, 360, Pump Station 319 and Levee Construction, Implementation, Palm Beach County, FL.

Summary: EPA has concerns about the potential long-term environmental consequences of this proposal especially accelerated conversion of the remaining natural areas/wetlands. The final document needs to detail the relationship, if any, of this project to other actions and projects.

Final EISs

ERP No. F-AFS-L61185-AK, Frosty Bay Timber Sale, Implementation, Frosty Study Area, Tongass National Forest, Wrangell Ranger District, AK.

Summary: EPA has concerns with the effect of the action alternatives on water quality. EPA believes that the lack of a water quality monitoring plan may make it difficult to ensure that Alaska Water Quality Standards (WQS) are met and will demonstrate that beneficial uses are protected.

ERP No. F-COE-H36143-KS, Cross Creek Flood Protection Plan, section 205 Small Flood Control Project, Implementation, City of Rossville, Shawnee County, KS.

Summary: EPA feels the responses to the comments on the draft EIS are sufficient to satisfy the concerns raised.

ERP No. F-FHW-K40168-CA, I-5 Widening and Interchange Improvements, I-5 at Genesee Avenue, I-805 at Mira Mesa Boulevard and I-5 at Del Mar Heights Road, Funding, section 404 and Bridge Permits, City and County of San Diego, CA.

Summary: EPA requested the FHW to more fully explore the project's air quality conformity before approving the Record of Decision, that additional means to reduce air quality impacts be explored, and that the Record of Decision include commitments to protect wetlands, water quality and air quality as reflected in the final EIS.

ERP No. F-FHW-K40170-CA, I-5/Santa Ana Freeway Widening and Interchanges I-5/CA-22 and I-5/CA-91 Reconstruction, Funding and section 404

Permit, Cities of Santa Ana, Orange County, CA.

Summary: EPA requested that the FHW not approve the Record of Decision until the project's conformity under the Clean Air Act was ensured. EPA requested that the Record of Decision contain various trip management measures to mitigate the long-term air quality impacts.

ERP No. F–MMS–L02019–AK, 1991 Chukchi Sea Outer Continental Shelf (OCS) Oil and Gas Sale 126, Leasing, AK.

Summary: EPA has environmental concerns with the proposed action due to the uncertainty about the long-term disturbance effects (during development and production) on endangered bowhead whales if leasing is allowed in the spring lead system. Since the final EIS concludes that the lease sale stipulations included in the PNS will not effectively minimize potential impacts on the whales, the most effective mitigation involves the deferral of the 501 blocks in the Point Lay deferral area.

ERP No. F–UAF–K11045–NV, Tonopah Test Range 37th Tactical Fighter Wing Relocation and other Tactical Force Structure Actions at Holloman and Nellis AFB, Nye County, NV.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–UMC–E11022–NC, Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC.

Summary: EPA believes the procedural aspects of the project will be satisfied as long as a mutually agreeable natural resources plan is completed which incorporates the greater Sandy Run area acquisition and commitments are made by the Marine Corps for its implementation prior to section 404 permit application.

ERP No. F–UMT–E54008–GA, North Atlanta Corridor Transit Improvements, Medical Center Station to North Springs, Funding, Fulton and Dekalb Counties, GA.

Summary: EPA expressed environmental concern regarding wetlands, noise and groundwater impacts.

ERP No. F–USN–K09804–NV, Naval Air Station Fallon Geothermal Resources for Electrical Power Generation, Phase I and II Development, COE section 404 Permit and Right-of-Way Grants, Churchill County, NJ.

Summary: EPA noted that a number of project impacts and mitigation measures were not fully identified in the final EIS due to its programmatic nature. EPA requested that future site-specific documents for geothermal energy developments more fully disclose specific impacts and mitigation.

Dated: June 18, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–14858 Filed 6–20–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3967–4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed June 10, 1991 through June 14, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910194, DRAFT EIS, AFS, ID, Accelerated Engelmann Spruce Harvest and Reforestation in Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales, Implementation, McCall Ranger District, Payette National Forest, Adams and Idaho Counties, ID, Due: August 05, 1991, Contact: Linda Fisher (208) 634–1440.

EIS No. 910195, FINAL EIS, SCS, CA, McCoy Wash Watershed, Flood Prevention Plan, Implementation, Section 404 Permit, Riverside County, CA, Due: July 22, 1991, Contact: Pearlie S. Reed (916) 449–2861.

EIS No. 910196, DRAFT EIS, AFS, MS, W. W. Ashe Nursery Integrated Pests Management Plan, Implementation, DeSoto National Forest, Forest County, MS, Due: August 05, 1991, Contact: Sally Campbell (503) 326–7755.

EIS No. 910197, DRAFT EIS, FAA, Terminal Doppler Weather Radar Site Determination Program, Implementation and Funding, Due: August 05, 1991 Contact: Ray C. Weimer, Jr. (202) 267–8420.

EIS No. 910198, FINAL SUPPLEMENT, AFS, AR, Ozark-St. Francis National Forest, Land and Resource Management Plan, Additional Information, Amendment to Alternative D, Implementation, Several Counties, AR, Due: July 22, 1991, Contact: Lynn C. Neff (501) 968–2354.

EIS No. 910199, DRAFT EIS, BLM, NV, Betze Open Pit Gold Mine Expansion, Implementation, Elko and Eureka Counties, NV, Due: July 22, 1991, Contact: Nick Rieger (702) 753–0200.

EIS No. 910200, DRAFT EIS, AFS, ID, Deep Creek and Copper Creek Timber Harvest and Road Construction, Implementation, Council Ranger District, Payette National Forest, Adams County ID, Due: August 12, 1991, Contact: Phil Gilman (208) 634–1304.

EIS No. 910201, DRAFT EIS, FAA, AZ, Phoenix Sky Harbor International Airport Master Plan Update Improvements, Runway 8L/26R Extension, Funding, City of Phoenix, Maricopa County, AZ, Due: August 05, 1991, Contact: David Kessler (213) 297–1534.

EIS No. 910202, FINAL EIS, UAF, NH, ME, Pease Air Force Base (AFB) Disposal and Reuse, Implementation, Portsmouth, Newington, Greenland, Rye, Dover Durhan, Madburg, Rochester, NH and Kittery, Eliot and Berwicks, ME, Due: July 22, 1991, Contact: LTC. Thomas Bartol (714) 382–4891.

EIS No. 910203, DRAFT EIS, FHW, NH, New Hampshire Route 101/51 Corridor Improvement, Epping to Hampton, Funding, COE Section 10 and 404 Permits, U.S. Coast Guard Permit, Rockingham County, NH, Due: August 15, 1991, Contact: William F. O'Donnell (603) 225–1608.

Dated: June 18, 1991.

William D. Dickerson,,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–14857 Filed 6–20–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–81020; FRL–3927–2]

Availability of Updated TSCA Inventory Computer Tapes Including a New Tape Linking PMN Case Numbers and TSCA Numbers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Updated computer tapes identifying substances included in the nonconfidential Toxic Substances Control Act (TSCA) Chemical Substance Inventory (Inventory) as of January 8, 1991, are available for sale from the National Technical Information Service (NTIS). Also available for sale is a new tape containing cross-references between Premanufacture Notifications (PMNs) and Chemical Abstracts Service Registry Numbers (CASRNs) or Accession Numbers (collectively and generally referred to as TSCA Numbers). The new tape includes only those PMNs for which EPA has received a Notice of Commencement (NOCs) of Manufacture/Import. If the specific chemical identity of a PMN substance is not confidential, the PMN case number is associated with a CASRN; if the identity of the PMN substance is confidential, the PMN case number is associated with an Accession Number.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director

Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. EB–44, 401 M St., SW., Washington, DC 20460, (202–554–1404), TTD: (202–554–0551).

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act requires the Administrator of EPA to identify, compile, keep current, and publish a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. In meeting this requirement, EPA issues printed versions of the TSCA Inventory, the first of which appeared in 1979. The latest edition is the "1990 Supplement to the 1985 Edition of the TSCA Inventory." The 1990 Supplement together with the 1985 Edition of the TSCA Inventory constitute the most current printed version of the TSCA Inventory. Copies of both editions are available to the public through the Government Printing Office.

Persons who wish to purchase copies may contact: Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Order Desk: (202) 783–3238. Requests for copies of the 1990 Supplement should specify the document number (GPO Stock No. 055–000–00361–1) and be accompanied by a check or money order in the amount of $15.00 per copy ($18.75 outside the U.S.). Requests for copies of the five volume set of the 1985 Edition of the TSCA Chemical Inventory should specify the document number (GPO Stock No. 055–00000254–1) and be accompanied by a check or money order in the amount of $161.00 for the five volume set ($201.00 outside the U.S. and Canada).

At the same time the 1990 Supplement was published, computer tapes corresponding to the nonconfidential chemicals included in the 1985 Inventory plus the 1990 Supplement, were made available to the public through the National Technical Information Service.

EPA has now made available the complete nonconfidential TSCA Inventory including all chemical substances included on the TSCA Inventory since it was first published in 1979 until January 8, 1991. Three computer tapes are available. The first tape, entitled "Preferred Name File," lists chemical substances according to CASRN, preferred chemical name, and where appropriate, molecular formula. The second tape or "Synonym File," is an alphabetical listing of chemical name synonyms for the preferred chemical names of substances included in the nonconfidential TSCA Inventory. The synonyms listed in the tape include only those submitted to EPA by reporting companies in their submissions. The printed Inventory includes these synonyms along with others that are copyrighted by the Chemical Abstracts Service. The tape does not include the generic names of substances for which the specific chemical identities were claimed as confidential.

A new, third computer tape, the "Cross-Reference File," has been produced to comply with numerous requests from industry for CASRNs and Accession Numbers. It contains the case numbers of all PMNs (P case numbers) and Polymer Exemption Applications (Y case numbers), added to the TSCA Inventory as of January 8, 1991. Each case number is associated with a CASRN if the chemical identity is nonconfidential, or an Accession Number if the chemical identity is confidential. The link between a P or Y case number and a CASRN or Accession Number is not TSCA confidential business information. Copies of all computer tapes are now available for sale from the National Technical Information Service (NTIS). Persons/firms who wish to purchase copies may contact National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Order desk: (703) 487–4850. Requests for copies of the two TSCA Inventory tapes, the Preferred Name File, and the Synonym File should specify the order number (PB91–50730) and be accompanied by a check or money order in the amount of $560.00 ($1120.00 outside the U.S. and Canada). Requests for copies of the Cross Reference File information of PMNs and Ys and matching CASRNs or Accession Numbers should specify the order number (PB91–50731) and be accompanied by a check or money order in the amount of $220.00 ($440.00 outside the U.S. and Canada). EPA plans to update these computer tapes periodically.

Dated: June 10, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Pesticides and Toxic Substances.

[FR Doc. 91–14825 Filed 6–20–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 91–142; DA 91–589]

Hearing Designation Order and Order to Show Cause

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order, Order Designating Applications for Hearing and Order to Show Cause.

SUMMARY: Cellular applications are designated for hearing and licensees are ordered to show cause why their licenses should not be revoked.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of a Memorandum Opinion and Order, Order Designating Applications for Hearing and Order to Show Cause, in CC Docket No. 91–142, adopted May 13, 1991 and released May 29, 1991.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St. NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21 St, NW., Washington, DC 20037.

Summary of Memorandum Opinion and Order, Order Designating Applications for Hearing and Order to Show Cause

The Chief, Common Carrier Bureau, under delegated authority, has designated for hearing cellular radio system applications and has ordered licensees to show cause why their licenses should not be revoked. The applicants and licensees apparently participated in agreements styled as "Mutual Contingent Risk Sharing Agreement" (Risk Sharing Agreements). The applications were prepared by The Cellular Corporation.

Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following applications have been designated for hearing upon the issues listed below:

Applicant	RSA	File No.
Algreg Cellular Engineering	Alabama 1	10607–CL–P–307–A–89
Cranford Cellular Communications	Alabama 5	10611–CL–P–311–A–89

Applicant	RSA	File No.
New-Era Cellular Tele-Communications	Arkansas 9	10563-CL-P-332-A-89
Bay Cellular of Florida	Mississippi 5	10754-CL-P-497-A-89
Florida Cellular	Missouri 2	10445-CL-P-505-A-89
A-1 Cellular Communications	Missouri 11	10454-CL-P-514-A-89
Bravo Cellular	North Carolina 15	10673-CL-P-579-A-89
TNT Communications	North Dakota 3	10233-CL-P-582-A-89
Alpha Cellular	Ohio 2	10909-CL-P-586-A-89
CEL-TEL Communications	Ohio 5	10912-CL-P-589-A-89
EJM Cellular Partners	Oklahoma 1	10567-CL-P-596-A-89
Pinellas Communications	Pennsylvania 2	10808-CL-P-613-A-89
Centaur Partnership	South Carolina 7	10720-CL-P-631-A-89
Signal Cellular Communications	South Carolina 8	10721-CL-P-632-A-89
A-1 CELLULAR COMMUNICATIONS	Texas 10	10409-CL-P-661-A-89
EJM Cellular Partners	Wyoming 4	10116-CL-P-721-A-89
TNT Communications	Puerto Rico 5	10678-CL-P-727-A-89

(1) To determine all the facts and circumstances surrounding the applicant's involvement with the Agreements.

(2) To determine, based on the evidence adduced in issue (1) above, which if any of the applicants entered into the Agreements.

(3) To determine, based on the evidence adduced above, which if any of the applications should be denied.

Pursuant to section 312 of the Communications Act of 1934, as amended, the licensees listed below, were ordered Show Cause why their licenses Should not be Revoked, the inquiry to focus on the matters listed below:

Licensee	Station	RSA	File No.
Satellite Cellular Systems	KNKN 268	Arizona 1	10037-CL-P-318-A-89
Jaybar Communications	KNKN 251	Arizona 6	10042-CL-P-323-A-88
Data Cellular Systems	KNKN 250	California 10	10029-CL-P-345-A-88
Cellular Pacific	KNKN 252	California 11	10031-CL-P-346-A-88
			06606-CL-MP-90
			06688-CL-MP-90
North American Cellular	KNKN 253	Idaho 1	10066-CL-P-388-A-88
Alpha Cellular	KNKN 340	Indiana 8	10318-CL-P-410-A-88
			04924-CL-AL-1-90
Edison Cellular	KNKN 281	Minnesota 4	10262-CL-P-485-A-88
Alee Cellular Communications	KNKN 271	New Mexico 3	10074-CL-P-555-A-88
Crystal Communication Systems	KNKN 309	Oregon 1	10078-CL-P-606-A-88

(1) To determine all the facts and circumstances surrounding the permittees involvement in the Agreements.

(2) To determine, based on the evidence adduced in (1) above, which if any of the permittees entered into the Agreements.

(3) To determine whether the permittees who entered into the Agreements falsely certified their applications (§ 22.923) or violated § 1.65 of the rules with regard to their applications when they were pending.

(4) To determine whether Alee Cellular lacked candor in failing to reveal to the Commission an alien general partner or that it changed the nature of its partnership.

(5) To determine whether Alee Cellular complied with the requirements of section 310(b) of the Communications Act and § 22.4 of the rules.

(6) To determine, based on the totality of the evidence adduced pursuant to 1, 3, 4 and 5 above, whether the permits of any of the captioned permittees should be revoked.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 91-14763 Filed 6-20-91; 8:45 am]

BILLING CODE 6712-01-M

Q 3 Corp. et al.; Applications

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant; city and state	File No.	MM docket no.
I		
A. Q 3 Corporation; Bolingbroke, GA.	BPH-900529MD	91-158
B. Donald L. Jones; Bolingbroke, GA.	BPH-900530ME	
C. Leslie E. Gradick; Bolingbroke, GA.	BPH-900530MG	
D. Joseph I. Kendrick; Bolingbroke, GA.	BPH-900531ME	

Applicant; city and state	File No.	MM docket no.
Issue Heading and Applicants		
1. Comparative, A, B, C, D		
2. Ultimte, A, B, C, D		
II		
A. Sacred Heart University, Inc.; Noyack, New York.	BPED-891215MK	91-157
B. Connecticut Public Broadcasting, Inc.; Southampton, New York.	BPED-900306MD	
C. Long Island University; Noyack, New York.	BPED-900516MA	
D. Long Island Educational TV Council, Inc.; Southampton, New York.	BPED-900516MB	
E. State University of New York; Stony Brook, New York.	BPED-900516MH	

Applicant; city and state	File No.	MM docket no.
Issue Heading and Applicants		
1. Financial Qualifications, A, D		
2. 307(b), Noncommercial Educational, A, B, C, D, E		
3. Contingent Comparative Noncommercial Education FM, A, B, C, D, E		
4. Ultimate, A, B, C, D, E		
III		
A. Twinlakes Communications; Russell Springs, KY.	BPH-900419MT	91-156
B. Reid D. Rippetoe; Russell Springs, KY.	BPH-900423MY	.....
Issues Heading and Applicants		
1. Comparative, A, B		
2. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-14764 Filed 6-20-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Adoption of Rules of Operation

[Docket No. AS91-2]

Appraisal Subcommittee; Adoption of Rules of Operation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Adoption of Rules of Operation and a Resolution delegating authority to the Chairman.

SUMMARY: This notice announces the Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council's ("FFIEC") May 29, 1991 adoption of its Rules of Operation. The notice also announces the ASC's June 14, 1991 adoption of a Resolution delegating authority from the ASC to its Chairman with respect to internal administrative matters.

SUPPLEMENTARY INFORMATION: Section 1102 (12 U.S.C. 3310) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") [1] established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of each Federal Financial Institutions Regulatory Agency ("FFIRA") and the Department of Housing and Urban Development. The ASC has permanent, professional staff to assist the ASC, to provide advice to the States and to carry out ASC rules, interpretations, policies and directives.

The ASC has several statutory duties under title XI. First, the ASC must monitor the appraisal regulations adopted by the FFIRAs and the Resolution Trust Corporation. Those regulations set out appraisal standards for federally related transactions and define those federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the ASC must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the ASC must monitor each State's certification and licensing programs for real estate appraisers. In that regard, each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of these individuals, along with an annual registry fee. The ASC must maintain a national registry of all state certified and licensed appraisers who perform or seek to perform appraisals in federally related transactions. The ASC also must review each State's compliance with the requirements of title XI and is authorized by title XI to take action against non-complying States.[2]

The Rules of Operation largely codify the informal procedures under which the ASC has been operating since its inception. They describe, among other things, the organization of ASC meetings, notice requirements for meetings, quorum requirements, and certain practices regarding the disclosure of information. The Subcommittee Resolution delegates authority from the ASC to its Chairman regarding matters of internal administration, including prescribing a system of administrative control of funds and reallocating budgetary resources within certain limits.

The ASC believes that the Rules of Operation and the Resolution should facilitate the ASC's and its staffs efforts in implementing, administering and enforcing title XI.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel; Appraisal Subcommittee, Federal Financial Institutions Examination Council; 1776 G Street, NW.; suite 850B; Washington, DC 20006; (202) 357-0133.

Dated: June 14, 1991.

Fred D. Finke,

Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council.

Rules of Operation

Article I

Nature and Purpose

Section 1.01. *Appraisal Subcommittee described.* The Appraisal Subcommittee, hereinafter referred to as the Subcommittee, is established by title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3310, 3331-3351), hereinafter referred to as the Act.

Section 1.02. *Functions.* The functions of the Subcommittee are set forth in section 1103 of the Act (12 U.S.C. 3332).

Section 1.03. *Definitions.* The words and phrases used herein shall, where applicable, have the definitions set forth in section 1121 of the Act (12 U.S.C. 3350).

Section 1.04. *Authority.* Except as otherwise provided in the Act, all authority for carrying out the functions of the Subcommittee shall reside in the Subcommittee; however, the Subcommittee may delegate any of its authority as it from time to time deems appropriate to Subcommittee members, officers, or employees or as otherwise authorized by law. As provided in section 1105 of the Act (12 U.S.C. 3334), the Chairperson of the Subcommittee shall have authority to appoint such officers and staff as may be necessary to carry out the functions of the Subcommittee.

Article II

Assessments

Section 2.01. *Assessments.* In accordance with section 1109 of the Act

[1] Public Law No. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3310, 3331-3351.

[2] See title XI, section 1118, 12 U.S.C. § 3347.

(12 U.S.C. 3338), the Subcommittee shall have the authority to receive an annual fee from each State licensed or certified appraiser eligible to do appraisals in federally related transactions. Any increase in the initial fee, which shall be not more than $25 per annum, is subject to the approval of the Federal Financial Institutions Examination Council (the Council). The statutory maximum fee is $50 per annum.

Article III

Members of the Subcommittee

Section 3.01. *Members.* The members of the Subcommittee shall be those persons described in section 1102 of the Act (12 U.S.C. 3310) and, pursuant to 12 U.S.C. 1708(e)(2), the Secretary (or designee) of the Department of Housing and Urban Development.

Section 3.02. *General Powers.* The affairs, business and property of the Subcommittee shall be managed by the Chairperson of the Subcommittee pursuant to the Subcommittee's direction and the Subcommittee's powers shall include those set forth in section 1106 of the Act (12 U.S.C. 3335).

Section 3.03. *Conpensation and Expenses of Members.* Each member shall serve on the Subcommittee without compensation other than that received from their respective employing Federal agency; but each member shall be entitled to an advance or reimbursement for reasonable expenses in carrying out their official duties as a member. Such advance or reimbursement shall be made only upon written request accompanied by adequate documentation of such expenses.

Section 3.04. *Chairperson of the Subcommittee.* (a) The Council shall elect a Chairperson of the Subcommittee. The term of office of the Chairperson shall be for a two (2) year term. Section 1104(a) (12 U.S.C. 3333(a)). The Chairperson shall carry out all duties required by the Act and these Rules and shall perform such other duties as from time to time may be assigned by the Subcommittee.

(b) The Subcommittee shall designate from time to time one of its members to act on behalf of the Subcommittee in the absence or incapacity of the Chairperson. The Subcommittee expects that the member designated will be the member whose agency follows that of the Chairperson in the listing in section 1121(6) the Act (12 U.S.C. 3350(6)).

Section 3.05. *Member Vocating Position in Respective Federal Financial Institutions Regulatory Agency.* A person shall remain a member of the Subcommittee until (a) that person resigns, (b) is no longer employed by the designating agency, or (c) the agency head designates a replacement. If the vacating member is Chairperson of the Subcommittee, a succeeding Chairperson shall be selected by the Council under section 1104(a) of the Act (12 U.S.C. 3333(a)).

Section 3.06. *Organization of Subcommittee Meetings.* (a) The Chairperson of the Subcommittee shall preside at Subcommittee meetings. In his or her absence, whether or not he or she has designated another to attend the meeting pursuant to section 3.11 of these Rules, the member designated under section 3.04(b) shall preside at such Subcommittee meeting.

(b) The Secretary, or in the absence of the Secretary, any person designated by the Chairperson, shall draft and transmit the minutes of the meeting to each member. The Executive Director is appointed to serve as Secretary, and shall be responsible for recording the minutes, including the full text of each resolution voted on by the Subcommittee and the substance of each action voted on by the Subcommittee as well as the vote. The Secretary will also be responsible for certifying or attesting to true copies, minutes, or other documetns stating that actions were in fact taken by the Subcommittee. The Secretary will also be responsible for maintaining and preserving at a single place, available for inspection at reasonable times by any member of the Subcommittee or any person designated by any member, the complete minutes of the proceedings of the Subcommittee. The Executive Director may delegate the ministerial duties of Secretary to Subcommittee staff.

(c) Regular meetings of the Subcommittee shall be held in Washington, DC, at a location designated by the Chairperson, or in such other place as the Subcommittee may designate. Special meetings shall be held in such place and at such location as designated by the calling party or parties.

(d) Regular meetings of the Subcommittee shall be held at least monthly at the call of the Chairperson. Special meetings shall be held as provided in section 3.07(b) below.

Section 3.07. *Notice of Meetings.* (a) The Secretary shall send a notice of each regular meeting to each Subcommittee member at least five (5) days prior to the date the regular meeting is to be held, or shall cause such notice to be delivered by hand at least five (5) days prior to the date of the regular meeting is to be held. Delivery by facsimile will be considered the equivalent of hand delivery. Every regular meeting notice shall specify at least the place, date and hour of the meeting.

(b) The Chairperson or any four (4) or more members may call a special meeting by giving one business day oral, written or facsimile notice to each meber and the Secretary. Said notice shall inform the members at least of the place, date and hour of the meeting and of the nature of the business to be conducted at the meeting.

(c) A waiver of any meeting notice signed by a member shall be the equivalent of timely giving to and receipt by that member of notice. A member's attendance at any meeting shall constitute waiver of notice of that meeting unless the member attends solely for the purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 3.08. *Quorum, Manner of Acting and Adjournment.* (a) At any regular or special meeting, the presence of a majority of the members of the Subcommittee shall constitute a quorum for the transaction of business. For the purpose of the preceding sentence, an alternate will count only if he/she has been so designated in writing by the head of the respective agency. The acts voted by a majority of its members present at such meeting shall be the acts of the Subcommittee. A member who is present at a meeting but who abstains from voting on any matter shall be counted for purposes of determining whether a quorum is present, whether that member withdraws from or remains in the meeting during such vote. A majority of the members present at any meeting, whether or not there is a quorum present, may ajourn the meeting. In transacting the business of the Subcommittee, each members shall be entitled to only one vote.

(b) No item shall be voted upon by the Subcommittee except (1) where notice that the item will be on the agenda of a regular meeting has been given pursuant to section 3.09(a) of these Rules, (2) where written notice that the item will be on the agenda of any meeting is delivered to each member at least two (2) full business days prior to the date of such meeting, or (3) upon the unanimous consent of all members of the Subcommittee.

Section 3.09. *Agenda of Subcommittee Meetings.* (a) The agenda for meetings shall be determined by the Chairperson in consultation with the Secretary, or where appropriate by the four (4) or more members calling the meeting; provided that the Chairperson shall include any item on the agenda when

he/she receives a request in writing from any single member at least three (3) full business days prior to the date of the meeting.

(b) Any member may request during any regular or special meeting that an item be placed on the agenda of that meeting. The item shall be placed on the agenda for discussion but only if a majority of those present approve the request.

Section 3.10. *Certain Interest of the Members.* No person serving as an officer or employee of the Subcommittee shall be deemed to have an interest adverse to the interest of the Subcommittee solely because that person is employed by a Federal agency and assigned to the Subcommittee. No Subcommittee member shall be required to abstain from voting on any matter solely because the Federal agency employing that member is or will be affected. No act of the Subcommittee shall be subject to challenge nor is any way be a affected by participation of said member in such vote.

Section 3.11. *Proxies.* A Subcommittee member may from time to time designate an alternate from his or her agency to carry out the member's duties on the Subcommittee. Such alternate may act in all matters as member of the Subcommittee, except that he/she may not act as the presiding officer of a Subcommittee meeting or vote unless so authorized in writing by the agency head.

Section 3.12. *Use of Conference Call Communications Equipment.* Any or all members of the Subcommittee may participate in a meeting through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak and hear each other. Any member so participating in the meeting shall be deemed to be present for all purposes. Actions taken by the Subcommittee at meetings where one or more members participate through the use of such equipment, including the votes of each member, shall be recorded in the minutes of the meeting.

Section 3.13. *Transaction of Business by Circulation of Written Items.* Any other provision of these Rules to the contrary notwithstanding, business may be conducted by the Subcommittee by the circulation of written items to all members where all members participate in consideration of each written item and where all members approve the action proposed. The refusal by any member to vote on any written item within a reasonable time, or in the alternative, a set time agreed to by a majority of all of the members, shall be considered a negative vote by that refusing member. The disposition of each written item circulated for vote, including the vote of each member, shall be recorded in the minutes of the Subcommitte.

Article IV

Officers and Employees

Section 4.01. *Permanent Officers and Employees.* (a) Except as otherwise specifically directed by the Subcommittee, its Chairperson shall have power to appoint and terminate such officers and employees as from time to time deemed necessary to carry out the Subcommittee's mission. Position descriptions will be written for all permanent personnel employed by the Subcommittee. Procedures relative to the appointment, termination, and compensation practices of the Subcommittee shall be consistent with the appointment and compensation practices of the Council or in accord with the policies set forth in Title 5, United States Code and applicable OPM rules and regulations.

(b) The Subcommittee may adopt from time to time such rules or regulations governing the conduct of officers and employees as it deems appropriate.

Section 4.02. *Officers and Employees Detailed From Federal Agencies.* Any person in the employ of any Federal agency detailed to the Subcommittee shall be considered an officer or employee of the Subcommittee. Such persons shall be assigned to and serve the Subcommittee for a designated, but renewable, priod of time and salaries and benefits received by such officers or employees shall be paid to them by the agency from which that officer or employee is assigned. All salaries and benefits received by such officers and employees shall be reimbursed by the Subcommittee to detailee's home agency. Each Federal agency will apply its own rules, regulations, and policies to the circumstances under which officers or employees assigned to the Subcommittee may resume their duties at that agency upon termination of assignment to the Subcommittee.

Article V

Fiscal year

Section 5.01. *Fiscal Year.* The Subcommittee budget shall be prepared on the basis of a fiscal year ending on September 30th.

Article VI

Amendments

Section 6.01. *Amendments.* Unless specifically stated herein, any of these Rules may be altered, amended or repealed, or new Rules may be adopted at any meeting, regular or special, of the Subcommittee by the affirmative act of a majority of all members of the Subcommittee, so long as such action is consistent with the requirements of applicable law. Amendments to these Rules shall not be given retroactive effect.

Article VII

Public Information

Section 7.01. *Disclosure of Information.* All matters pertaining to the disclosure of information by the Subcommittee shall be governed by applicable law and such resolutions, orders, rules and regulations that may be adopted by the Subcommittee.

Section 7.02. *Public Statements and Statements to the Press.* No written statments shall be made to the press expressing the Subcommittee's policy or descriptive of its action except as authorized pursuant to the procedures to be adopted by the Subcommittee. Such statements shall be issued, when authorized and approved, through the office of the Executive Director as delegated by the Chairperson. Where an individual member is responding on issues before the Subcommittee, that member should use best efforts to alert other members and the Secretary concerning the substance of the response as soon as possible.

Section 7.03. *Disclaimer.* Except when otherwise authorized by the Subcommittee, individual members, officers and employees shall include in written statements and oral presentations the following disclaimer of responsibility:

The Appraisal Subcommittee, as a matter of policy, disclaims responsibility for any private publication or statement by any of its members, officers, or employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Subcommittee.

The wording of the disclaimer may vary with the circumstances so long as its substance is clearly communicated.

Any written statement or oral presentation which reflects Subcommittee positions must set forth those positions accurately and, if it contains differences with Subcommittee positions, it should clearly state that such positions are solely those of the author.

Article VIII

Advisory Committee

Section 8.01. *Appointment of an Advisory Group.* Subject to the Federal

Advisory Committee Act (5 U.S.C. App. 1–14) and to such procedures as it may from time to time adopt, the Subcommittee may establish nonvoting advisory group(s). Such advisory group(s) shall meet with the Subcommittee on a schedule determined by the Subcommittee. Members of the advisory group(s) may receive from the Subcommittee an allowance, in an amount to be determined by the Subcommittee, for necessary expenses incurred in attending such meetings.

Article IX

Administrative Support

Section 9.01. *Service of Administrative Support.* (a) To insure that the orderly administration of the affairs of the Subcommittee is accomplished, administrative support functions shall be provided by the permanent staff of the Subcommittee with assistance, when needed, from staff of the Federal agencies that are members of the Subcommittee.

(b) The Chairperson shall have the authority to negotiate and execute agreements regarding personnel, payroll, grant administration, procurement, and other services, consistent with directives of the Subcommittee. In executing this authority, the Chairperson shall be authorized to obtain such administrative support services as he/she deems necessary.

Article X

Report to Congress

Section 10.01. *Annual Report to Congress.* In accordance with section 1103 of the Act (12 U.S.C. 3332), the Subcommittee shall prepare an annual report to the Congress not later than January 31 of each year. The report will cover the activities of the Subcommittee during the preceding year.

Section 10.02. *Preparation of Reports.* The Executive Director or other party as designated by the Subcommittee is authorized and directed to cause to be prepared in a timely fashion, for review and approval by the Subcommittee, the annual report and such other documents concerning the activities or decisions or recommendations of the Subcommittee as is required by law or requested by the Congress or any other party.

Article XI

Conduct and Responsibilities

Section 11.01. *Ethics Provision.* The members of the Subcommittee and its officers and employees shall be required to abide by a code of ethics, consistent with applicable law, that will be formulated and adopted by the Subcommittee.

Resolution

Whereas, The responsibilities of the Chairperson of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council include the internal administration of the Appraisal Subcommittee:

Now, therefore, be it resolved, That the Chairperson is hereby delegated the administrative responsibilities set forth below.

The Chairperson,

(1) Prescribes a system of administrative control of funds.

(2) Approves and/or delegates the approval of the distribution of budgetary resources in the form of a Budget Execution Plan and may reallocate resources among object classes so long as: (a) Aggregate obligations do not exceed the annual budget approved by the Subcommittee; (b) no single reallocation action exceeds $100,000 without the consent of the Subcommittee; and (c) every reallocation action of $100,000 or less shall be reported to the Subcommittee at the Subcommittee meeting following the reallocation action.

(3) Delegates authority for the issuance of allotments and the incurrence of obligations.

The Chairperson is delegated authority, subject to the Rules of Operation, concerning personnel actions, including the appointment, promotion, and removal of personnel, other than officers, employed by the Subcommittee.

The Chairperson is delegated authority over all other matters of internal administration not listed above unless such authority is specifically retained by the Subcommittee or specifically delegated to another party.

Finally, the Chairperson is authorized to delegate to members, officers, or employees of the Subcommittee, as the Chairperson may deem necessary, any of the above authorities delegated to the Chairperson with the exception of the authority to supervise the position of Executive Director.

Be it further resolved, That the Chairperson shall perform duties under this authority only when serving as the Subcommittee's Chairperson. In other instances, (i.e., serving as the Subcommittee's member) the interest of his/her home agency is represented. The Subcommittee may act in any matter delegated herein upon its own motion or at the request of the Chairperson.

[FR Doc. 91–14860 Filed 6–20–91; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–048.

Title: South Europe/U.S.A. Freight Conference.

Parties: Achille Lauro. Compagnie Generale Maritime. Compania Trasatlantica Espanola, S.A. Evergreen Marine Corporation (Taiwan Ltd. Farrell Lines, Inc. "Italia" di Navigazione, S.p.A. Jugolinija. Jugooceanija. Lykes Lines. A.P. Moller-Maersk Line. Nedlloyd Lines. Sea-Land Service, Inc. P&O Containers Limited. Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the Agreement's independent action (IA) provisions by permitting the parties, upon 10 days notice, to increase, as well as decrease, the amount of brokerage and freight forwarder compensation. However, this authority will expire on November 1, 1991. It would also permit a party to adopt the IA of another party on time-volume rated items and allow cargo carried by the adopting members to be counted towards the common shipper's volume commitment.

By Order of the Federal Maritime Commission.

Dated: June 17, 1991.

Joseph C. Polking

Secretary.

[FR Doc. 91–14775 Filed 6–20–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

F.N.B. Corporation, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to engage *de novo* through its subsidiary, Dollar Interim Savings Association, New Castle, Pennsylvania, in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to engage *de novo* in community development, in the form of equity investments in rental real estate projects which will qualify for the low-income housing credit under section 42 of the Internal Revenue Code of 1986 pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14792 Filed 6-20-91; 8:45 am]

BILLING CODE 6210-01-F

KKR Associates, L.P., et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. KKR Associates, L.P., New York, New York; KKR Partners II, L.P., New York, New York; and Whitehall Associates, L.P., New York, New York; to acquire securities exercisable for or convertible into at least 10 percent, but not more than 25 percent, of the outstanding common stock of Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and thereby indirectly acquire Fleet National Bank, Providence, Rhode Island; Fleet National Bank of Boston, Boston, Massachusetts; Fleet National Bank of Connecticut, Hartford, Connecticut; Fleet Bank of Connecticut, Hartford, Connecticut; Fleet Bank of Maine, Portland, Maine; Fleet Bank-NH, Nashua, New Hampshire; Norstar Bank of Upstate New York, Albany, New York; Norstar Bank, N.A., Buffalo, New York; Norstar Bank of Central New York, Syracuse, New York; Norstar Bank, Melville, New York; New Bank of New England, N.A., Boston, Massachusetts; New Connecticut Bank and Trust Company, N.A., Hartford, Connecticut; and New Maine National Bank, Portland, Maine.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14793 Filed 6-20-91; 8:45 am]

BILLING CODE 6210-01-F

Manufacturers National Corporation; Detroit, Michigan; Proposal to Provide Financial Advisory Services; Engage in Private Placement Activities; and Act as a Broker or Agent in Financial Transactions

CORRECTION

This notice corrects a previous *Federal Register* notice (FR Doc. 91-13659) published at page 26684 of the issue for Monday, June 10, 1991.

The 15th paragraph of the entry for Manufacturers National Corporation, Detroit, Michigan, is amended to read as follows:

The Board previously has approved applications by bank holding companies to provide M&A Advisory Services, Valuation Services, Fairness Opinions and Feasibility Studies, *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987), and to engage in Private Placement Activities, *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990). Applicant proposes to conduct these activities in substantial compliance with the Board's prior Orders. In connection with its Private Placement Activities, Applicant has indicated that it will not engage in the private placement of securities issued by investment companies that are sponsored or advised by Applicant or any of its affiliates.

Comments on this application must be received by July 8, 1991.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14794 Filed 6-20-91; 8:45 am]

BILLING CODE 6210-01-F

NierBanc Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the

Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 10, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. NierBanc Corporation, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Castle Rock Industrial Bank, Castle Rock, Colorado, which is in the process of converting to a state-chartered commercial bank under the name of Legacy Bank.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14795 Filed 6-20-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Developmental Disabilities

Interagency Committee on Developmental Disabilities; Meeting

Agencies holding the meeting: Administration on Developmental Disabilities, Administration on Children and Families, U.S. Department of Health and Human Services; Office of Special Education and Rehabilitative Services, U.S. Department of Education.

Time and Date: Wednesday, July 10, 9:30 a.m. to 12.

Place: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Meeting is open to the public.

Contact people: Ronald W. Conley, room 348F, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202–245–7617) or Wendell Johnson, room 3014A, Mary Switzer Building, 330 C Street, SW., Washington, DC 20202 (202–732–1274).

The Interagency Committee on Developmental Disabilities (ICDD) was established by the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (Pub. L. 98–527) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (Pub. L. 101–496) added the requirement that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register.** The ICDD is co-chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

The meeting will cover four topics: (1) Proposed changes in procedures in order to enhance the effectiveness of the Interagency Committee; (2) approval of subcommittee activities; (3) a proposal to collect information of several data items uniformly across advocacy programs (Protection and Advocacy for People with Developmental Disabilities, Protection and Advocacy for People with Mental Illness, Client Assistance Program, and Ombudsman Program); and (4) problems in providing long-term funding for people in supported employment. Among proposals to enhance the effectiveness of the ICDD are more frequent and regularly scheduled meetings, and direct agency approval of the work of the subcommittees to the Interagency Committee.

Dated: June 14, 1991.

Will Wolstein,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 91-14800 Filed 6-20-91; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of July 1991.

The initial review committees will be performing review of applications for Federal assistance and the Drug Testing Advisory Board, NIDA, will be performing reviews of National Laboratory Certification Program inspections and operations. Therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c) (2),(4) and (6) and 5 U.S.C. app. 2 10(d).

The Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, NIMH, will include discussion of housing issues relevant to the homeless mentally ill population; the Advisory Panel on Alzheimer's Disease, NIMH, will discuss plans for the third annual report and a special report on ethnic minority and crosscultural issues in Alzheimer's disease; and the ADAMHA AIDS Advisory Committee will include presentations and discussion of behavior change research and AIDS prevention, as well as AIDS research demonstrations and treatment interventions. These meetings will be open and attendance by the public will be limited to space available; however, due to security requirements of the meeting location of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, it will be necessary to register your intent to attend with the contact person listed below.

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: Sociobehavioral Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.
Meeting Date(s): July 9–11, 1991.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: July 9, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: H. Noble Jones, Room 10–22, Parklawn Building Telephone: (301) 443–9042.

Committee Name: Drug Testing Advisory Board, NIDA.
Meeting Date(s): July 10, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20857.
Open: July 10, 9 a.m. to 12 noon.
Closed: Otherwise.
Contact: Donna M. Bush, Room 9A–53, Parklawn Building Telephone (301) 443–6014.

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.
Meeting Date(s): July 10–11, 1991.
Place: Hyatt Regency Hotel, One Metro Center, Bethesda, MD 20814.
Open: July 10, 9 a.m. to 9:30 a.m.
Closed: Otherwise.

Contact: Iris W. O'Brien, Room 10–42, Parklawn Building, Telephone: (301) 443–2620.

Committee Name: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Meeting Date(s): July 11–12, 1991.

Place: Hyatt Regency Hotel, One Metro Center, Bethesda, MD 20814

Open: July 11, 9 a.m. to 10 a.m.

Closed: Otherwise.

Contact: Barbara Smothers, Ph.D., Room 16C–26, Parklawn Building, Telephone (301) 443–6101.

Committee Name: Advisory Committee of the Task Force on Homelessness and Severe Mental Illness.

Meeting Date(s): July 17, 1991.

Place: Hubert H. Humphrey Building Stonehenge Conference Room (615F) 200 Independence Avenue, SW. Washington, DC.

Open: July 17, 9 a.m. to 5 p.m.

Contact: Jane Steinberg, Room 11C–03, Parklawn Building, Telephone: (301) 443–0000.

Committee Name: Advisory Panel on Alzheimer's Disease, NIMH.

Meeting Date(s): July 24–25, 1991.

Place: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Open: July 24, 9 a.m. to 5:30 p.m., July 25, 8:30 a.m. to 3:30 p.m.

Contact: George Niederehe, Room 7–103, Parklawn, Building, Telephone (301) 443–1165.

Committee Name: Psychobiological, Biological, and Neurosciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Committee, NIMH.

Meeting Date(s): July 25–26, 1991.

Place: The Wyndham Bristol Hotel 2430 Pennsylvania Avenue, NW. Washington, DC 20037

Open: July 25–26, 8:30 a.m. to 9:15 a.m.

Closed: Otherwise.

Contact: Rehana Chowdhury, Room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Committee Name: Clinical, Psychosocial, and Behavioral Sciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Meeting Date(s): July 25–26, 1991.

Place: The Wyndham Bristol Hotel 2430 Pennsylvania Avenue, NW. Washington, DC 20037

Open: July 25–26, 8:30 a.m. to 9:15 a.m.

Closed: Otherwise.

Contact: Regina Thomas, Room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Committee Name: ADAMHA AIDS Advisory Committee.

Meeting Date(s): July 30–31, 1991.

Place: National Institutes of Health Building 1, Wilson Hall, Bethesda, MD.

Open: July 30, 8:30 a.m. to 5 p.m., July 31, 8:30 a.m. to 3 p.m.

Contact: Ellen Stover, Room 17C–06, Parklawn Building, Telephone (301) 443–3598.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, room 16C–20, (301) 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer room 10–42, (301) 443–2755; Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9–105, (301) 443–4333; Ms. Peggy Cockrill, ADAMHA Committee Management Officer, room 13–103, (301) 443–4266. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: June 17, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–14759 Filed 6–20–91; 8:45 am]

BILLING CODE 4160–20–M

Health Resources and Services Administration

Availability of Funds for New Community Health Centers and Expanded Community Health Center Activities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the **Federal Register** on June 4, 1991 (56 FR 25435) for applications to establish new community health centers and expand the capacity of existing community health centers. The new due date is July 15, 1991.

All other information remains unchanged.

Dated: June 17, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–14862 Filed 6–20–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Meeting of the Genome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, July 2, 1991, at the St. James Hotel, 950 24th Street, NW., Washington, DC. This meeting will be open to the public on July 2nd from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on July 2nd from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892 (301) 402–0838, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: June 17, 1991.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 91–14820 Filed 6–20–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–31]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 21, 1991.

ADDRESSES: For further information, contact James N. Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and § 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other

real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or make available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter ot James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ–ASESC/BC Pentagon, Washington, DC 20330; (703) 697–7462. (These are not toll-free numbers.)

Dated: June 14, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

California—George Air Force Base

All properties included in this Notice are located at George Air Force Base, San Bernardino, California. The Base is being closed pursuant to the 1988 Base Closure and Realignment Act. The Department of the Air Force is the landholding and disposal agency. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures. The Air Force has determined that all suitable properties are available for use to assist the homeless.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 269–2020.

Suitable/Available Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos
Property Numbers: 199120421–199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos
Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos
Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos
Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos
Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos
Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos
Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos
Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos
Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos
Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete;

1800 sq. ft. to 2300 sq. ft.; possible asbestos
Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos
Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos
Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos
Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive materials
Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive materials

[FR Doc. 91–14641 Filed 6–20–91; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–91–3237; FR–3013–C–02]

Funding Availability for Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Correction

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; correction.

SUMMARY: This document corrects the addresses and telephone numbers for the field offices in Birmingham and Knoxville which were erroneously published in a notice of funding availability for Fiscal Year 1991 that appeared in the **Federal Register** on Thursday, May 23, 1991 (56 FR 23738).

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Moderate Rehabilitation Division, room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–4969. Hearing-or-speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free numbers).

Accordingly, beginning on page 23742 the following correction is made to FR Doc. 91–12216 in the issue of May 23, 1991:

Region IV

Birmingham Office

The address and telephone number should read "Beacon Ridge Tower, 600 Beacon Parkway W., suite 300, Birmingham, AL 35209–3144 (205) 290–7617".

Knoxville Office

The address and telephone number should read "John J. Duncan Federal Building, 710 Locust St., suite 300, Knoxville, TN 37902–2526 (615) 549–9384".

Dated: June 17, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–14791 Filed 6–20–91; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4230–15; F 19154–3]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), will be issued to NANA Regional Corporation, Inc. for approximately 3,271.06 acres. The lands involved are in the vicinity of Kobuk, Alaska, within T. 19 N., R. 9 E., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Archorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 22, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91–14837 Filed 6–20–91 8:45 am]
BILLING CODE 4310–JA–M

[CO–010–01–5101–09–C003: COC–52705]

Application for a Natural Gas Pipeline Right-of-Way

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Application for a Right-of-Way to Construct, Operate, and Maintain a 20-Inch Buried Natural Gas Pipeline, and Request for Comments.

SUMMARY: Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Colorado Interstate Gas Company (CIG) has filed an application with the Bureau of Land Management for a right-of-way to construct, operate, and maintain a 20-inch buried, natural gas pipeline. This proposed pipeline, referred to as the Uinta Basin Lateral, would be approximately 223 miles long, crossing public, state, tribal, and private lands in Uinta County, Utah, Rio Blanco County, Colorado, Moffat County, Colorado, and Sweetwater County, Wyoming. It is the purpose of this notice to inform the public and other interested parties that the Bureau of Land Management (BLM) will be proceeding with the preparation of an environmental assessment for this action, and to allow such interested parties to comment on the application.

DATES: Written comments will be accepted until July 22, 1991. No public meetings are presently planned.

ADDRESS: Comments should be sent to the Project Manager, Bureau of Land Management, Post Office Box 928, Meeker, Colorado, 81641.

FOR FURTHER INFORMATION CONTACT: Dan Martin, Project Manager, (303) 878–3601, or FTS 581–5505.

SUPPLEMENTARY INFORMATION: The Uinta Basin Lateral Project is being proposed by CIG in order to connect natural gas supplies in the Natural Buttes area in Utah, and the Piceance Basin in Colorado with their existing Rock Springs to Denver Main Line, for delivery to markets in the Midwest and east. The proposal is to construct, operate, and maintain a 20-inch, buried natural gas pipeline, from the vicinity of Bonanza, Utah, through western Colorado, and on to the vicinity of Wamsutter, Wyoming.

The proposed pipeline would be approximately 223 miles long, and would have a capacity of approximately 180 MMcf per day. Related facilities would include new and additional compression at two sites, four meter stations, and two communication sites. The proposed pipeline would parallel existing pipeline rights-of-way for approximately 85% of its length.

Construction would take approximately nine (9) months, and would take place in multiple spreads or segments. All related activities would be performed in compliance with requirements specified in all applicable authorizing documents.

Activities would begin with centerline survey and staking. The right-of-way, which would have a width of 50 feet (with an additional 10 feet for workspace during construction), would be cleared, and the topsoil stripped and stockpiled for use in reclamation. Cut and fill techniques would only be utilized in rugged topography where steep side-slopes are encountered.

Ditching would generally be accomplished by using a mechanical trencher or a backhoe. However, some blasting may be necessary where surface or subsurface rock precludes other ditching methods. In these latter instances, precautions necessary for the protection of existing structures, facilities, and water supplies will be adhered to. After the ditch is prepared the pipe will be positioned, welded, and placed in the trench following standard pipeline construction methods. The pipeline will be tested in accordance with Department of Transportation regulations.

After pipeline installation is completed, all work areas will be restored to as near their pre-construction condition as possible.

The right-of-way will be waterbarred as necessary, and will be reseeded.

Based on an initial review of the application, several potential issues have been identified. These include threatened and endangered species of plants and animals, cultural resources, wildlife, steep slopes, fragile soils, major river crossings (5), riparian areas, and alternatives. The public is invited to identify other potential issues or concerns to be considered during the environmental review.

Because most of the proposed pipeline route is on public land administered by the Bureau of Land Management (BLM), the BLM will be the lead Federal agency for preparation of the required environmental documentation under the National Environmental Policy Act. However, authorization would also be required from the Federal Energy Regulatory Commission (FERC), the Bureau of Indian Affairs (BIA), and the Corps of Engineers (COE). These agencies are requested to formally indicate whether they wish to be cooperating agencies in the environmental documentation process.

William J. Pulford,

District Manager, Craig District.

[FR Doc. 91-14875 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-4214-10; GPI-212; OR-10139]

Opening of National Forest Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 545 acres of National Forest System lands included in an application for withdrawal involving the Bagby Research Natural Area.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described lands will be relieved of the temporary segregative effect of withdrawal application OR-10139. The withdrawal application will continue to be processed unless it is cancelled or denied:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,

Two tracts of land located within the following described subdivisions and more particularly identified and described upon the official records of the Oregon State Office, Bureau of Land Managament:

Sec. 22, SE¼SW¼, NE¼NE¼SE¼, S½N½SE¼, and S½SE¼;

Sec. 23, S½NE¼SW¼, NW¼SW¼, S½SW¼, and SW¼SE¼;

Sec. 26, NE¼NE¼, W½NE¼, NW¼SE¼NE¼, N½NW¼, SE¼NW¼, N½NE¼SW¼, and NW¼NW¼SE¼;

Sec. 27, NE¼NE¼, W½NE¼, NE¼NW¼, and N½SE¼NW¼.

The areas described aggregate approximately 545 acres in Clackamas County.

Dated: June 10, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14772 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GPI-210; OR-16757]

Opening of National Forest Land; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 1,318 acres of National Forest System lands included in an application for withdrawal involving the Metolius Research Natural Area.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described land will be relieved of the temporary segregative effect of withdrawal application OR-16757. The withdrawal application will continue to be processed unless it is cancelled or denied:

Willamette Meridian

Deschutes National Forest

T. 12 S., R. 9 E.,

A tract of land within Secs. 25, 26, 34, 35, and 36, more particularly described as follows: Beginning at a point 396 feet west of the quarter corner between Secs. 34 and 35, T. 12 S., R. 9 E.; thence in a northerly direction parallel to and 100 feet east of the centerline of Road No. 113 to a point on the east-west line between Secs. 23 and 26, T. 12 S., R. 9 E.; thence easterly along the line between Secs. 23 and 26 and between Secs. 24 and 25, T. 12 S., R. 9 E., to a point on the summit of Green Ridge approximately 1,000 feet west of the quarter corner between Secs. 24 and 25, T. 12 S., R. 9 E.; thence in a southerly direction along the summit of Green Ridge to a point on the east-west line between Sec. 36, T. 12 S., R. 9 E., and Sec. 1, T. 13 S., R. 9 E., approximately 300 feet west of the quarter corner between said Sections; thence in a westerly direction along said section line to the section corner

common to Secs. 35 and 36, T. 12 S., R. 9 E., and Secs. 1 and 2, T. 13 S., R. 9 E.; thence in a northerly direction along the section line between Secs. 35 and 36, T. 13 S., R. 9 E., to the quarter corner common to said Sections; thence in a westerly direction approximately 5,670 feet to point of beginning.

The area described contains approximately 1,318 acres in Jefferson County.

Dated: June 10, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14773 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-4410-08]

Availability of the Draft Judith-Valley-Phillips Resource Management Plan/ Environmental Impact Statement; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the Judith-Valley-Phillips planning area. The RMP/EIS describes and analyzes future options for managing approximately 2.8 million BLM surface acres and 3.4 million acres of federal minerals in Valley, Phillips, Fergus, Petroleum, and Judith Basin Counties and that portion of Chouteau County south of the Missouri River. The RMP/EIS provides a comprehensive plan for managing federal resources administered by BLM.

PUBLIC PARTICIPATION: Copies will be available at each public library located in Valley, Phillips, Fergus, Petroleum, Judith Basin, and Chouteau Counties. Copies will be available from the Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160, 406-538-7461. Public reading copies will be available for review at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240.

External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107.

Lewistown District Office, Judith Resource Area, Airport Road, P.O. Box 1160, Lewistown, MT 59457-1160.

Valley Resource Area, Route 1, 4775, Glasgow, MT 59230.

Phillips Resource Area, 501 South Second Street East, Malta, MT 59538.

Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice Of Filing of the Draft in the **Federal Register.** Comments can also be presented at seven public meetings to be held:

July 23, 1991	7 p.m	National Guard Armory, South of Malta, Malta, MT.
July 24, 1991	7 p.m	Elks Club, 309 Second Avenue South, Glasgow, MT.
July 25, 1991	7 p.m	Hays Recreation Center, Hays, MT.
July 29, 1991	7 p.m	Winifred High School, Winifred, MT.
July 30, 1991	7 p.m	Ramada Inn, 1223 Mullowney Lane, Billings, MT.
July 31, 1991	7 p.m	Winnett Court House, Winnett, MT.
August 1, 1991	7 p.m	BLM District Office, Airport Road, Lewistown, MT.

ADDRESSES: Written comments on the document should be addressed to: B. Gene Miller, District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, RMP/EIS Team Lead, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160, 406-538-7461.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS analyzes five alternatives to resolve nine issues: Land acquisition and disposal, access to BLM land, off-road vehicles, oil and gas leasing and development, hardrock mining, riparian and wetland management of watersheds, elk and bighorn sheep habitat management, prairie dog and black-footed ferret management, and areas with special management concerns. Each alternative represents a complete management plan for the area. The alternatives can be summarized as: (A) Current Management or No Action; (B) Resource Production; (C) Resource Protection; (D) a Balance Between Production and Protection; and (E) the Preferred Alternative which is a combination of the previous four.

The RMP/EIS evaluates 31 Areas of Critical Environmental Concern (ACEC) nominations of which 8 met the relevance and importance criteria and are studied for special management.

The South Moccasin-Judith Mountains Scenic Area would be designated an ACEC to protect the scenic qualities of the visual resources in the Judith and South Moccasin Mountains. Surface-disturbing activities would not be allowed which could not be mitigated and reclaimed to natural conditions. The area would remain open to mineral entry with mitigating measures to protect the scenic qualities. The area would be an avoidance area for rights-of-way, and off-road travel would be restricted yearlong to designated roads and trails.

The Acid Shale-Pine Forest in Petroleum County would be designated an ACEC to protect an endemic plant community unique to the area and a fragile watershed. Disposal of forest products from the area would be prohibited, unless necessary for stand preservation, and off-road travel would be restricted yearlong to designated roads and trails.

The Square Butte Outstanding Natural Area would be designated an ACEC to protect natural endemic systems, cultural sites, scenic qualities, and rare geologic features unique to Montana. The BLM would pursue a protective withdrawal to segregate the area from mining claim location, and the area would be withheld from oil and gas leasing except for a 1/4-mile perimeter of the Butte. Surface-disturbing activities, including transmission lines, roads, communication sites, pipelines, and off-road travel would be prohibited.

Collar Gulch in the Judith Mountains would be designated an ACEC to protect a pure strain of westslope cutthroat trout. The BLM would pursue a protective withdrawal to segregate the area from mining claim location, and the area would be closed to off-road travel except for the main Judith Peak road and connected Big Grassy Peak and Crystal Peak/Collar Ridge access roads.

Azure Cave in the Little Rocky Mountains would be designated an ACEC to protect cave resources and the potentially northernmost bat hibernaculum in the United States. The

BLM would continue the withdrawal which segregates the area from mining claim location, and the area would be closed to oil and gas leasing. Off-road travel would be restricted yearlong to designated roads and trails.

Big Bend of the Milk River would be designated an ACEC to protect archaeological resources representing bison hunting and prehistoric ceremonial use of the Northwestern Plains. The BLM would pursue a protective withdrawal to segregate the area from mining claim location and solid mineral leasables. Off-road travel would be restricted to designated roads and trails.

Prairie dog towns within the black-footed ferret reintroduction area, which includes two nominations (Complex 1 and Complex 2) would be designated an ACEC to protect habitat for the black-footed ferret. Powerline rights-of-way would be located to avoid prairie dog towns and discourage raptor perching.

Management prescriptions for these potential ACECs vary by alternative and are described in the RMP/EIS.

The RMP/EIS evaluates the eligibility of 187 rivers and streams within the planning area for further study as potential components of the National Wild and Scenic Rivers System. One segment of the Judith River was determined to be eligible and classified as wild, but not suitable for inclusion in the National Wild and Scenic Rivers System.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in September 1988. Since that time public meetings, mailings, and briefings were conducted to solicit comments and ideas. All comments presented throughout the process have been considered.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the Final Revised USDI–USDA Guidelines for Eligibility, Classification, and Management of Rivers (47 FR 39454).

Dated: June 13, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91–14838 Filed 6–20–91; 8:45 am]

BILLING CODE 4310–DN–M

National Park Service

Shenandoah National Park; Insignia; Prescription

I hereby prescribe the "Shenandoah National Park" logo which is depicted below as the official insignia of the Shenandoah National Park, a unit of the National Park system, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of title 18 of the United States Code, whoever manufactures, sells or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph, print or impression in the likeness of any imitation thereof, except as authorized under regulations made pursuant law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive "Shenandoah National Park" Insignia and to assure against its use for purposes other than marking informational signs, interpretive exhibits, information literature for park visitors, official correspondence and notices of the Shenandoah National Park and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the National Park was established, the National Park Service will proceed to secure trademark registration under section 1115 of title 15 of the United States Code for Shenandoah National Park "SHENANDOAH NATIONAL PARK" Insignia.

Shenandoah National Park Logo as follows

Dated: May 30, 1991.

Anthony M. Corbisiero,

Acting Regional Director.

[FR Doc. 91–13379 Filed 6–20–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Name: Michelin Corporation,
Address 515 Madison Avenue, New York, New York 10022

2. Owned subsidiaries (directly or indirectly) which will participate in the operations, and State(s) of incorporation:

a. *Michelin Tire Corporation, a New York corporation*

b. *Uniroyal Goodrich Tire Company, a Delaware corporation*

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14798 Filed 6–20–91; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 491]

Railroad Cost of Capital—1990

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

SUMMARY: On June 20, 1991, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1990. The composite cost of capital rate for 1990 is found to be 11.8 percent, based on a current cost of debt of 9.8 percent, a cost of preferred equity capital of 8.1 percent, a cost of common equity capital of 12.9 percent, and a 34.7 percent debt/0.7 percent preferred equity/64.6 percent common equity capital structure mix. The cost of capital finding made in this proceeding will enable the Commission to make its annual determination of railroad revenue adequacy for 1990.

EFFECTIVE DATE: June 21, 1991 .

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275–7489 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision should be used to evaluate the adequacy of railroad revenues for 1990 under the standards and procedures promulgated

in *Standards for Railroad Revenue Adequacy*, 3 I.C.C. 2d 261 (1986). This finding may also be used in proceedings involving the prescription of maximum reasonable rate levels.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: June 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14809 Filed 6–20–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–101 (Sub–No. 9X)]

Duluth, Missabe and Iron Range Railway Co.—Abandonment Exemption—in St. Louis, Co., MN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 1-mile line of railroad between mileposts 14.4 and 15.4, near Biwabik, in St. Louis County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 21, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 1, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 11, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Colette F. Shotton, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 26, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14737 Filed 6–20–91; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Finance Docket No. 31871]

Indiana Hi-Rail Corp.; Modified Rail Certificate

On April 23, 1991, Indiana Hi-Rail Corporation (IHRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate a line of railroad between milepost, 54.4 at Lima, OH, and milepost 84.2, at Glenmore, OH.

The line was formerly owned by the Erie Lackawanna Railway Company (EL) and acquired by the State of Ohio. At the time of the acquisition the line was not designated to Consolidated Rail Corporation (Conrail), but was available for subsidy under section 304 of the Regional Rail Reorganization Act of 1973 (3R Act). USRA-Final System Plan-July 1975—Vol. II, page 122. Under section 304, EL gave notice of intent to abandon the line effective March 31, 1976. The line was then acquired by the Ohio Rail Transportation Authority in 1977 and the Spencerville & Elgin Railroad Company (S&E) was designated as operator. *See* D–OP 23, Certificate of Designated Operator—Spencerville & Elgin Railroad Company (not printed), served February 13, 1979. In 1979 the Van Wert County-Allen County Port Authority acquired the line. On November 7, 1990, S&E gave notice of intent to terminate service on or about 60 days from the date of notice. S&E no longer provides service on the line.

This rail line qualifies for a modified certificate of public convenience and necessity. A rail line which was approved for abandonment under the Final System Plan, but over which operations were continued by a D–OP, has been "fully abandoned, or approved for abandonment" within the meaning of 49 CFR 1150.21. *See* Finance Docket No. 28990F, Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions (not printed), served July 16, 1981, pp. 9–10.

No subsidy is involved and there are no preconditions for shippers to meet in order to receive rail service. Operations over the line will be conducted indefinitely unless terminated upon appropriate notice in accordance with 49 CFR 1150.24.

This line connects at Ohio City, OH, with IHRC's St. Mary's district line between Van Buren, IN, and Douglas, OH, and connects with Conrail at Lima. IHRC has served customers on the Lima-Glenmore line as an intermediate carrier and under the modified certificate will provide a more efficient service by serving customers directly.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: June 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14810 Filed 6-20-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15382), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146. 7, State Road, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14803 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 7, 1991, MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcenent Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1/24)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing theron in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 21, 1991.

Dated: June 10, 1991

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14804 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15383), MD Pharmaceutical, Inc. 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14805 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15383), Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58206, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14806 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15384), Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of meperidine (pethidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14807 Filed 6–20–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 10, 1991, 9:30 am-12 noon, rm. S–2217, FPBldg., Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavalle, Director, Trade Advisory Group, Phone: (202) 523–2752.

Signed at Washington, DC this 17th day of June 1991.

Robert Bostick,

Associate Deputy Under Secretary, International Affairs.

[FR Doc. 91–14816 Filed 6–20–91; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 1, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 1, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Big Yank Corp. (Wkrs)	Wewoka, OK	06/10/91	05/29/91	25,910	Jeans.
BP Oil Pipeline Co. (CO)	Kirbyville, TX	06/10/91	05/28/91	25,911	Oil & Gas.
BP Oil Pipeline Co. (CO)	Longview, TX	06/10/91	05/28/91	25,912	Oil & Gas.
Converse Inc. (Wkrs)	N Reading, MA	06/10/91	05/30/91	25,913	Athletic Shoes.
Converse Inc. (Wkrs)	Lumberton, NC	06/10/91	05/30/91	25,914	Athletic Shoes.
Fred Stecker Oldsmobile Inc. (Wkrs)	Euclid, OH	06/10/91	05/31/91	25,915	Oldsmobile Sales.
H.S. Automotive, (Longview) (USWA)	Mansfield, OH	06/10/91	05/28/91	25,916	Auto Seats.
H.S. Automotive, (Rupp) (USWA)	Mansfield, OH	06/10/91	05/28/91	25,917	Auto Seats.
J&G Shake Co. (Wkrs)	Forks, WA	06/10/91	05/22/91	25,918	Shakes and Shingles.
JO-MAR Inc. Textile Div. (CO)	Philadelphia, PA	06/10/91	05/30/91	25,919	Textiles for Apparel.
Kozee Komfort Products (Wkrs)	Brooklyn, NY	06/10/91	05/28/91	25,920	Baby Bed Equip.
McNally Replacement Parts Inc. (Wkrs)	Pittsburg, KS	06/10/91	05/28/91	25,921	Mining Machinery.
MGM/UA Home Video (Wkrs)	Gallatin, TN	06/10/91	05/28/91	25,922	Video Cassettes.
Rocky Mountain Temporaries (Wkrs)	Longmont, CO	06/10/91	05/31/91	25,923	Hard Disk Drives.
Shelborne Shirt Co., Inc. (Wkrs)	New York, NY	06/10/91	05/30/91	25,924	Shirts.
Thomas & Betts (IBEW)	Elizabeth, NJ	06/10/91	05/24/91	25,925	Electrical Fittings.
U.S. Steel/Shawnee Mine (AMWA)	Pineville, WV	06/10/91	06/03/91	25,926	Volatile Metallurgical Coal.
Union Railroad Co	Monroeville, PA	06/10/91	06/03/91	25,927	Hauling of Steel.

[FR Doc. 91–14811 Filed 6–20–91; 8:45 am]

BILLING CODE 4510–28–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,667; Dinner Bell Foods, Inc., Defiance, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,717; Marnik Fashions, Inc., Glassboro, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,664; CTS Electronics Corp., Brownsville, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,707; Elco Processors, Inc., Bronx, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,673; Gilbert & Bennett Manufacturing Co., Georgetown, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,681; Pacific Press & Shear, Mt. Carmel, IL

U.S. Imports of machine tool (metal cutting and metal forming) decreased absolutely in 1990 compared to the same period in 1989.

TA–W–25,690; Tektronix, Inc., Hybrid Components Div., Beaverton, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,726; Unitog Co., Clinton, MO

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–25,680; Otis Elevator, NAO, Bloomington, IN

A certification was issued covering all workers separated on or after March 25, 1990.

TA–W–25,655; Trenton Terminals, Inc. Utica, NJ

A certification was issued covering all workers separated on or after March 7, 1990.

TA–W–25,634; Teledyne Control Applications Div, Teledyne Geotech, Garland, TX

A certification was issued covering all workers separated on or after March 16, 1990.

TA–W–25,616; Carolina Glove Co., Conover, NC

A certification was issued covering all workers separated on or after March 22, 1990.

TA–W–25,676; K.T. Swasey, Solon, OH

A certification was issued covering all workers separated on or after April 4, 1990.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 17, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–14815 Filed 6–20–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 719]

OPTO Generic Devices, Inc., Van Hornesville, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 1991 in response to a worker petition which was filed on April 22, 1991 on behalf of workers to OPTO Generic Devices, Inc., Van Hornesville, New York.

The petitioners have requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 14th day of June, 1991

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–14814 Filed 6–20–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 350]

Shot Point Services, Inc., Houston, TX

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Shot Point Services, Incorporated, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–25, 350; Shot Point Services, Incorporated, Houston, Texas (June 13, 1991)

Signed at Washington, DC, this 13th day of June, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–14813 Filed 6–20–91; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25, 583; Toshiba America Consumer Products, Inc., Lebanon, TN

TA-W-25, 515; Sebewaing Industries, Inc., Sebewaing, MI

TA-W-25, 642; Custom Electronics, Inc., Oneonta, NY

TA-W-25, 659; Affiliated Industries of Shippensburg, Inc., Shippenburg, PA

TA-W-25, 617; Cars and Concepts, Inc., Brighton, MI

TA-W-25, 520; AMPEX Corp., Colorado Springs, Co

TA-W-25, 675; HBI Automotive Glass, Lancaster, OH

TA-W-25, 697; A.O. Smith Electrical Motors Div., Mt. Sterling, KY

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25, 672; General Electric Co., Cicero, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 827; Vigor Co., New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 684; Rodime, Inc., Boca Raton, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 661; Bates Corrugated, Townsend, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 593; Goss & Deleeuw Machine Co., Kinsington, CT

U.S. imports of machine tools (metal cutting and metal forming) declined absolutely and relative to domestic shipment in 1990 compared to 1989.

TA-W-25, 683; Quantum Chemical Corp., USI Chemicals Div., Rolling Meadows, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 648; GCA Tropel, Fairport, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant periods as required for certification.

TA-W-25, 700; Biltwell, Salesbury, MO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant periods as required for certification.

TA-W-25, 652; Pioneer Indistrial Products, Attica, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 589; Comair Rotron, Inc., Saugerties, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 591; Federal Mogual Corp., Blacksburg, VA

U.S. imports of ball and roller bearings and parts declined in the first 6 months of 1990 compared to the same period in 1989.

TA-W-25, 541; The Toro Co., Home Improvement Div., Willmar, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 674; Glamour Sportswear Corp., Frackville, PA

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-25, 656; Tuff-Bilt Tractors Ltd, Cumming, GA

A certification was issued covering all workers separated on or after March 29, 1990.

TA-W-25, 724; Syntrex, Inc., Eatontown, NJ

A certification was issued covering all workers separated on or after March 1, 1990.

TA-W-25, 663; Crydom Corp., Milwaukee, WI

A certification was issued covering all workers separated on or after March 27, 1990.

TA-W-25, 695; Weather Tamer, Inc., Centerville, TN

A certification was issued covering all workers separated on or after March 30, 1990.

TA-W-25, 727; Weather Tamer, Inc., Columbia, TN

A certification was issued covering all workers separated on or after April 1, 1990.

TA-W-25, 712; Leonard Electric Products Co., Inc., Brownsville, TX

A certification was issued covering all workers separated on or after April 4, 1990.

TA-W-25, 744; Gadsden Sportswear, East Gadsden, AL

A certification was issued covering all workers separated on or after April 9, 1990.

TA-W-25, 804; Golan Manufacturing Co., Abingdon, VA

A certification was issued covering all workers separated on or after April 30, 1990.

TA-W-25, 685; Sharpe Cedar Products, Onalaska, WA

A certification was issued covering all workers separated on or after March 31, 1990.

TA-W-25, 714; Marlene Industries Corp d.b.a. Decaturville Sportswear Co., Decaturville, TN

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-25, 715; Marlene Industries Corp d.b.a. Decaturville Sportswear Co., Lexington, TN

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-25, 716; Marlene Industries Corp d.b.a. Trousdale Manufacturing Co., Hartsville, TN

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-25, 716A; Marlene Industries Corp d.b.a. Russell Sportswear Co., Russell Springs, KY

A certification was issued covering all workers separated on or after April 8, 1991.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 12, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14812 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA91-1 (Feb. 22, 1991)..... p. 421, pp. 422-438.
MA91-2 (Feb. 22, 1991)..... p. 439, pp. 440-452.
MA91-3 (Feb. 22, 1991)..... p. 453, pp. 456-462.
New Jersey, NJ91-4 (Feb. 22, 1991). p. 745, pp. 746-749.
Virginia:
VA91-5 (Feb. 22, 1991)..... p. 1243, p. 1244.
VA91-9 (Feb. 22, 1991)..... p. 1253, p. 1254.
VA91-50 (Feb. 22, 1991)..... p. 1357, p. 1358.
West Virginia:
WV91-2 (Feb. 22, 1991)..... p. 1421, pp. 1421-1444a.
WV91-3 (Feb. 22, 1991)..... p. 1445, pp. 1446-1458a.

Volume II

Illinois:
IL91-9 (Feb. 22, 1991) ..... p. 153, pp. 154-160.
IL91-12 (Feb. 22, 1991) ..... p. 171, pp. 172-182a.
IL91-13 (Feb. 22, 1991) ..... p. 183, pp. 184-194b.
IL91-14 (Feb. 22, 1991) ..... p. 195, pp. 196-204b.
IL91-15 (Feb. 22, 1991) ..... p. 205, pp. 206-214.
Indiana:
IN91-1 (Feb. 22, 1991)..... p. 243, pp. 244, 257.
IN91-2 (Feb. 22, 1991)..... p. 259, pp. 260-278.
IN91-4 (Feb. 22, 1991)..... p. 291, pp. 292-304b.
Kansas, KS91-6 (Feb. 22, 1991). p. 363, pp. 364-368.
Michigan, MI91-7 (Feb. 22, 1991). p. 515, pp. 516-534.
Missouri, MO91-1 (Feb. 22, 1991). p. 651, pp. 652-672.

Volume III

California, CA91-6 (Feb. 22, 1991). p. 131, pp. 131-132.
Colorado:
CO91-1 (Feb. 22, 1991)..... p. 151, pp. 152-154.
CO91-5 (Feb. 22, 1991)..... p. 177, pp. 176-177.
Idaho:
ID91-4 (Feb. 22, 1991)..... p. 225, pp. 226-227.
ID91-5 (Feb. 22, 1991)..... p. 229, p. 230.
Oregon, OR91-1 (Feb. 22, 1991). p. 371, pp. 383-387.
Washington:
WA91-1 (Feb. 22, 1991)..... p. 451, pp. 452-476.
WA91-2 (Feb. 22, 1991)..... p. 477, pp. 478-486b.
WA91-5 (Feb. 22, 1991)..... p. 495, pp. 496-498.

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th Day of June 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-14697 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-90]

Communication Certification Laboratory; Application for Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Communication Certification Laboratory's application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Communication Certification Laboratory, which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: Communication Certification Laboratory, 1940 West Alexander Street, Salt Lake City, Utah 84119.

Background

The Communication Certification Laboratory (CCL) was formed in 1971 to test telephone terminal equipment for connection to the telephone network, and since then has been engaged in testing all types of electronic equipment. In the early seventies, CCL was testing to the interconnect standards of New York, Illinois and California. When the Federal Communications Commission (FCC) adopted part 68 for telephone terminal equipment in 1976, the emphasis of the testing shifted to that required for FCC part 68.

In 1985, the laboratory moved to its present site in Salt Lake City, Utah. In 1986, CCL accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). CCL has also done testing to many EIA, AT&T, and Rural Electrification Administration (REA) standards, which included acoustic, surge, and mechanical and electrical testing.

The Communication Certification Laboratory applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in January 1990. The application was subsequently revised and additional data provided as requested. As on-site evaluation was conducted on March 20 and 21, 1990, and the results discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey. The final on-site review report (Ex. 3A), consisting of the on-site evaluation of CCL's testing facilities and administrative and technical practices and the corrective action taken by CCL in response to these evaluations, and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of CCL's application together with a positive preliminary finding was published in the **Federal Register** on December 26, 1990 (55 FR 53063–53065). Interested parties were invited to submit comments.

There was one response to the **Federal Register** notice of the CCL application and preliminary finding (Docket No. NRTL–1–90). The respondent (Ex. 4–1) was concerned with two issues. (1) Whether a certification mark must be registered by the applicant with the U.S. Patent and Trademark Office under the Lanham Act, 15 U.S.C., paragraphs 1051–1127, in order to obtain approval from OSHA as an NRTL, and (2) Whether OSHA must examine more completely the ownership of the applicant in order to assure its independence under 29 CFR 1910.7(b)(3).

OSHA determined that CCL had made formal application for a registered certification mark with the U.S. Patent and Trademark Office. OSHA also reexamined in depth the nature of CCL's claimed independence and determined, to its satisfaction, that the applicant met its requirements as delineated in 29 CFR 1910.7(b)(3).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review report and the products and standards in question, CCL's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks.

The laboratry leases a 12,000 square foot brick building on a 1.4 acre site in an industrial park. Approximately 4,000 square feet is used for product testing and evaluation. The laboratory has been at this location since November 1985. Water, electric and gas utilities are available in the laboratory. The test standards for which CCL requested recognition do not require utilities that are not available in the laboratory. Environmental conditions within the laboratory are controlled by a central heating, air conditioning and ventilation system. Three environmental chambers are used to control temperature and humidity required for some tests specified in the standards. The laboratory has a shipping/receiving area to control and identify products submitted for testing. Product samples are tagged and marked with a number that identifies the laboratory department conducting the evaluation and the test number that has been assigned sequentially to that product. A decription of all products received and shipped are recorded in a log book and the information entered into a computer data base. Documents and invoices received with the product are placed in the Test File for that test number. The main entrance to the building is monitored during working hours by a receptionist and by office workers located adjacent to the entrance. Visitors are required to identify themselves and to sign in and out in a visitor's register. The facility is locked during non-working hours. The facility has no perimeter alarm system. A controlled access room, with a code access key pad, motion detector and door sensor, is available for clients requiring confidentiality. The alarm system is connected to a contracted security agency. A lockable equipment cabinet and fire-proof file cabinet are located inside the room.

The laboratory employs some 35 people at the laboratory site, nine of whom are currently involved in testing and evaluation to the product standards listed. Key personnel consist of 2 technicians, 3 engineers and supervisors, and 4 support personnel.

The president of CCL has overall responsibility for product testing and evaluation.

CCL submitted position descriptions, which included education, training and experience, for the job titles of the personnel involved in product testing and evaluation. The personnel appear to have the proper training to carry out the duties they are assigned.

The laboratory identified more than 100 test instruments and devices used in testing products. Equipment is available in the laboratory to perform the tests specified in the standards. The laboratory's Quality Manager maintains a current inventory of test equipment including the model number, serial number and type of equipment, name of the manufacturer, date received, and range of measurement. Service manuals and other literature received with newly acquired test equipment are filed in the laboratory's library and are available to all personnel. Malfunctioning test equipment is removed from service for evaluation and repair by the Engineer Support Technician.

Test equipment is calibrated off-site by a contracted vendor who is required to certify that each calibrated instrument is traceable to National Institute of Standards and Technology (NIST) standards. Test instruments are generally calibrated at intervals recommended by the manufacturer. However, the interval may be varied based upon the instrument's calibration history. An Engineering Support Technician is responsible for the calibration of test equipment. The Engineering Manager is notified monthly of test equipment requiring calibration the following month. The calibration status of a test instrument is indicated on a calibration label affixed to the instrument by the contracted calibration laboratory. Records of the repair, maintenance and calibration of all test equipment are kept by the Quality Manager.

The laboratory maintains a Technical Standard describing the test procedures used to evaluate telephone equipment per UL 1459. This document indicates the standard number and specific section of the standard, detailed testing procedures, test equipment required for the test, and evaluation criteria for determining whether the equipment passes or fails. The Technical Standard also includes narrative notes and diagrams as necessary to explain set-up of the test. A Technical Standard will be written for each requested standard prior to certifying equipment to that standard. Test methods in the Technical Standard are prepared and revised as necessary by the Engineering Manager responsible for that testing area, who also reviews and approves the entire Technical Standard. At the time of the investigation, CCL had in place only CCL Technical Standard 50–790–02, the testing procedures for UL 1459. The test procedures for ANSI/UL 478, ANSI/UL 1012, and UL 1950 were in development. CCL made the commitment to OSHA not to list any products to these three standards until the proper test operations and testing procedures have been through the necessary evaluation and review and have been submitted to the OSHA NRTL staff for their approval.

The laboratory performs all product testing in-house and does not subcontract any of the tests specified in the standards.

CCL maitains a Quality Assurance (QA) Procedures Manual which includes the organization structure, documentation requirements, calibration system, testing complaints, training and certification, and operational procedures of the laboratory. The manual is reviewed annually with the Quality Systems under the direction of the Vice-President. Quality assurance responsibilities are assigned for each function of the laboratory's operation. CCL's president is responsible for the Quality Assurance Program. The Project Engineer, Engineering Manager and Vice-President of Engineering review all test reports prepared by the Test Technician for completeness and accuracy. If a discrepancy is discovered during the review process, the report is returned to the Test Technician for revision. This revised report is then again routed through the review process.

The operational procedures for product testing and evaluation include inital administrative procedures, incoming inspection, storage and handling of product and component samples, in-process control, testing, reports, equipment storage, and return shipping to the client.

Test data sheets for testing conducted per UL 459 have been prepared and will be prepared for the other requested test standards. These data sheets are included in the laboratory's Technical Standard for telephone equipment. These test data sheets include the name of the test, the project number, the applicant's name, product model number, the specification reference (standard and section number), reference laboratory test procedure, test data to be recorded, test results, comments, signature of the person conducting the test and date of test. The laboratory requires that components used in listed products be recognized by an NRTL where required by the standard. The laboratory does not list or recognize components.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

CCL's application as well as the on-site review report indicate that the applicant does maintain effective procedures for producing creditable findings and reports that are objective.

The General Laboratory Practices Manual lists the contents of the final report as: The name and address of the laboratory; pertinent dates and identifying numbers; client name; description or identification of each product sample; identification of known deviations from test methods, measurements, examinations, or derived results, and identification of test anomalies; a statement, if necessary, as to whether or not the test results comply with the requirements of product or project specifications; signature of the person having technical responsibility for the test report; the laboratory's assigned test number; and any other items required by the test method.

A typical test report is assigned a laboratory number and a date of issue, and identifies the manufacturer, model, type and trade name of the product, name of the applicant and addresses of the manufacturer and applicant, and the number and edition of the standard to which the equipment was tested and evaluated. It contains a detailed description of the product, schematics, parts lists, drawings reproduced from the clients or vendor's supplied documentation, and photographs where applicable. The report also includes a section-by-section narrative to address each section of the standard. Sections that do not apply to that product are so noted. The report specifies and describes the manufacturing and production tests required by the standard. As applicable, the report may require that a label, containing the manufacturer's name, catalog number, and the certifier's logo and listing number, be attached to the product. Other information included in the report includes installation and maintenance instructions, and information to be included in the instruction manual required by the standard. Test data sheets are not included in the test

reports but are filed in the test file maintained for each project.

The test reports are written by a Test Technician, reviewed by the Engineering Manager who signs the report for the laboratory and, prior to issuance, reviewed by the Vice-President of Engineering. Changes in the product are reflected in the report in the following way: These reports are to be amended if less than 50 percent of the report would be changed because of product revisions or changes to the standard. A new report is to be issued if more than 50 percent of the report would be changed. The original test reports are sent to the applicant. Copies of the entire test files are stored off-site in the event the original files are lost or destroyed. CCL also maintains a computer data base of all test reports issued, which may be used to verify the status of listed products for local inspection authorities. There are log in/log out procedures to identify test files taken from the files room. Test records are loose-leafed in the file. The completeness of a test file can be determined by an index located at the front of the test file.

CCL subscribes to the UL updating service for the ANSI/UL and UL test standards for which recognition is requested. Copies of standards and revisions are distributed to laboratory personnel requiring the information. Revised and superseded standards are archived in the laboratory library for reference.

The Quality Assurance Procedures Manual includes formal procedures that the client or other interested parties may use to question test results or to challenge a test method or an interpretation or application of the test standard. The Vice-President of Engineering will notify the client, in writing, of the laboratory's reply. The client may appeal this decision to the President of the laboratory. If the disagreement involves a method of measurement, the laboratory will solicit the NIST for an interpretation of the method of measurement.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: Testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. CCL has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

CCL has a written Factory Inspection Program to assure that the product currently manufactured is identical to the product previously tested and certified. The laboratory has not yet implemented this program since they have not certified any products prior to applying for acceptance as an NRTL.

The Factory Inspection Program includes the following requirements:

Unannounced inspections will be conducted quarterly at the final manufacturing site.

Prior to the inspection, the inspector will review the laboratory copy of the test report and will discuss the product with the laboratory's Project Engineer. A copy of the test report and the applicable standard will be taken to the inspection site.

A random sample of the product will be selected from inventory. If the product is not available from inventory, the manufacturer will be asked to provide information on where the product may be purchased and inspected.

The procedures for the factory inspection will include, as applicable, an examination or test of the sample for the following: Proper packaging, marking and labeling; current and leakage measurements; components and workmanship of the assembly; the sample product compared with the test report photographs; spacing measurements; and quality assurance procedures (which will be reviewed with the manufacturer).

The laboratory will use its own personnel or will contract through another laboratory or organization for conducting the follow-up inspections. Alternatively, CCL may purchase the product to be inspected and tested at the laboratory's facility. If discrepancies are noted in the product sample, the inspector will notify the manufacturer and suspend further shipment of labeled products until evaluation by CCL. If the discrepancies are serious, appropriate action will be taken to correct any products shipped by the factory during the previous six months.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

OSHA requested and reviewed information from CCL concerning stock holdings and other company board memberships of officers/members of the Board of Directors of CCL and believes that based upon this review, an examination of the application, and discussions with executives of the CCL, the Communication Certification Laboratory can be considered to be in compliance with the requirements of § 1910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an ANSI safety designated product standard. As to the two non-ANSI UL test standards for which CCL has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c)(1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the Communication Certification Laboratory has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Communication Certification

Laboratory is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

CCL has stated that all the standards in these categories are used to test equipment or materials which may be used in environment under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 1012—Power Supplies
UL 1459—Telephone Equipment
UL 1950—Information Technology Equipment Including Electrical Business Equipment

The Communication Certification Laboratory must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CCL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CCL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CCL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CCL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CCL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CCL will continue to meet the requirements for recognition in all areas where it has been recognized; and

CCL will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATES: This recognition will become effective on June 21, 1991, and will be valid for a period of five years from that date, until June 21, 1996, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 18th day of June, 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-14817 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Inter-Arts Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice of a meeting of the Inter-Arts Advisory Panel (Dance on Tour Section) to the National Council on the Arts (originally published June 10, 1991, **Federal Register** No. 111 FR 26697) which was to have been held June 25-26, 1991 from 9:30 a.m.-5 p.m. will be held on June 25 only.

Portions of this meeting will be open to the public from 9:30 a.m.-10 a.m. and 3 p.m.-5 p.m. The topics will be opening remarks, guidelines review/policy discussion—state component.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: June 13, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-14840 Filed 6-20-91; 8:45 am]

BILLING CODE 7537-01-M

POSTAL RATE COMMISSION

[Order No. 887; Docket No. A91-6]

Pardeesville, Pennsylvnia 18243 (Maurice DeLorenzo, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b) (5)

Issued June 17, 1991.

Name of Affected Post Office: Pardeesville, Pennsylvania 18243.

Name(s) of Petitioner(s): Maurice DeLorenzo.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 13, 1991.

Categories of Issues Apparently Raised.

1. Requirement that written determination be made available to persons served by the post office (39 U.S.C. 404(b)(3)).

2. Requirement of adequate notice to insure that persons served by the post office will have an opportunity to present their views (39 U.S.C. 404(b)(1)).

3. Availability for public inspection of supporting material (Exh. 432.31, Post Office Discontinuance Guide).

4. Effect on the community (39 U.S.C. 404(b)(2)(A).

5. Effect on postal services (39 U.S.C. 404(b)(2)(C).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before June 28, 1991.

(B) The Secretary shall publish this notice and order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp

Secretary.

June 13, 1991—Filing of petition.
June 17, 1991—Notice and order of filing of appeal.
July 8, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).

July 16, 1991—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).

August 7, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c)).

August 22, 1991—Petitioner's Reply Brief should Petitioner choose to file one (see CFR 3001.115(d)).

August 29, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).

October 11, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91-14768 Filed 6-20-91; 8:45 am]
BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29312; File No. SR-Amex-90-32]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Temporarily Approving Proposed Rule Change Relating to Procedures for Handling and Executing Market-On-Close Orders

I. Introduction

On April 18, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Amex Rule 109 in order to make the procedures currently used to execute market-on-close ("MOC") orders in certain stocks on expiration Fridays applicable to all MOC orders on every trading day.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The original proposed rule change, which was filed with the Commission on December 11, 1990, was revised by the Exchange to include a more detailed description of the proposed procedures for handling MOC orders. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Esq., Branch Chief, SEC, dated April 16, 1991. In addition, the Amex requested that the Commission approve the proposed rule change for a one year pilot period. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Dated January 3, 1991.

The proposed rule change was noticed in Securities Exchange Act Release No. 29126 (April 24, 1991), 56 FR 20244 (May 2, 1991). No comments were received on the proposal.

II. Background

In 1987, Exchange Rule 109 was amended to implement a specific procedure for handling MOC orders on expiration Fridays in Amex-listed stocks that are components of a stock index on which an option and/or futures contract is traded (*e.g.*, the Standard and Poor's 500 Stock Index). Under this procedure, described more fully below, MOC buy and sell orders are paired off against each other, and the imbalance is executed against the prevailing bid or offer as appropriate. The procedure was implemented because many trading strategies involving stock indices require the unwinding of positions in the component stocks at the closing price on expiration Friday, since this is the price upon which index options and some future contracts base their settlement.

The procedure currently used for handling MOC orders on a daily basis other than expiration Fridays requires that, when the closing spread is no wider than the minimum fractional change in which the stock trades,[4] MOC orders to buy be executed against the offer, and MOC orders to sell be executed against the bid. The current procedure, therefore, assures that one type of order will not receive the final closing price.

Thus, because the Exchange has become aware that a number of trading techniques and strategies used by institutional investors have been developed which call for a single closing price on a daily basis, not just on expiration Fridays, the Exchange proposes to amend rule 109 in order to extend the procedures currently used to execute MOC orders in certain stocks only on expiration Fridays to all Amex-listed stocks on every trading day.

III. Description of Proposal

The proposal requires that all buy and sell MOC orders be paired-off against each other at the close of every trading day. If there is an imbalance, the imbalance would be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders would then be executed at the same price as the imbalance. If there is no imbalance, the paired-off orders would be executed at the last sale on the Exchange prior to the close of trading in that stock. The Exchange states that this procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paried-off in implementing the procedure are reported as "stopped stock," informing customers with unexecuted limit orders on the specialist's book that the MOC transaction was executed outside the regular auction market, and for that reason their orders may not have participated.

[4] Currently, the minimum fractional change for securities selling under $.25 is 1/32 of $1.00 per share; above $.25 but below $1.00 is 1/16 of $1.00 per share; and at $1.00 and over is 1/8 of $1.00 per share. See Amex Rule 127. The Exchange recently submitted to the Commission a proposed rule change to amend Rule 127. See Securities Exchange Act Release No. 29183 (May 9, 1991), 56 FR 22741 (noticing File No. SR-Amex-91-07).

IV. Discussion and Conclusion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with sections 6 and 11A of the Act [5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Amex proposal is substantially similar to a New York Stock Exchange, Inc. ("NYSE") proposal which was approved by the Commission for a one year pilot period.[6] As stated in the Order approving the NYSE's proposal, the Commission is aware that the use of composite-asset trading techniques and strategies have increased substantially over the past several years, prompting a growing need to establish greater pricing certainty at the close. Both the stock exchanges and broker-dealer have developed products to facilitate the trading of portfolios of securities.[7] The

[5] 15 U.S.C. 78f and 78k-1 (1988).

[6] The Amex proposal herein is similar to the NYSE proposal with regard to making the procedures used for the execution of MOC orders on expiration Fridays applicable to every trading day. The NYSE proposal went even further than the Amex proposal, however, by allowing for the execution of matched MOC orders entered by the same member firm. See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting approval for a one-year pilot period to File No. SR-NYSE-89-10).

[7] *See, e.g.*, Securities Exchange Act Release No. 29237; International Series Release No. 275 (May 24.

Continued

Amex's proposal is yet another attempt to respond to the demand of customer and member firms to engage in index-related trades.

In addition, because the Amex proposal is substantially similar to the NYSE proposal approved by the Commission,[8] the Commission believes that approval of the Amex proposal also is consistent with section 11A of the Act.[9] Section 11A(a)(1)(C) states that fair competition among exchange markets "is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly market." The Commission believes that denying approval to the Amex proposal herein would impede competition between exchange markets, ultimately causing harm to both individual investors and the maintenance of a fair and orderly market. Furthermore, the Commission believes that denying Amex members the use of the proposed MOC procedures would unfairly discriminate between exchange members in contravention of section 6(b)(5) of the Act.

Thus, because the proposed MOC procedures are similar to procedures currently used by the Amex on expiration Fridays and the NYSE on every trading day, and because of the anticipated benefits of the proposed procedures, which include providing customers with additional flexibility in order execution, the Commission agrees with the Exchange that it would be appropriate to approve the proposed rule change. Like the approval of the NYSE proposal, the Amex proposal would be approved for a one-yer pilot period. During this period, the Commission expects the Exchange to develop criteria to evaluate the effects of the MOC procedures. When evaluating the effects of the MOC procedures, the Exchange should focus on, for example, any changes in stock market volatility or order flow during the last hour of trading (*i.e.*, between 3: and 4: p.m.).[10] The Exchange also should examine the use of the MOC procedures for Amex stocks that are not included in indexes underlying standardized options and determine how MOC orders are being used for these stocks.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change be, and hereby is, approved for a one year pilot period ending on June 14, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: June 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14828 Filed 6-20-91; 8:45 am]

BILLING CODE 8010-01-M

1991) (order approving an NYSE proposal to institute an off-hours trading facility which will allow the execution of crosses of multiple-stock aggregate-price buy and sell orders); and letter from Brandon Becker, Associate Director, Division of Market Regulation, SEC, to Lloyd H. Feller, Esq., Morgan Lewis and Bockius, dated July 28, 1987 (no-action letter issued by the Commission staff under sections 5 and 6 of the Act on behalf of a request by Jeffries and Co., Inc. to implement a computerized order entry mechanism to allow for trading customized portfolios of stocks).

See note 6, *supra.*

[9] 15 U.S.C. 78k-1 (1988).

[10] In this regard, the Commission expects the Amex to submit a report detailing its experience with the MOC procedures at least three months prior to the expiration of the one year pilot program. Further, at the same time, the Amex should submit to the Commission a proposed rule change, pursuant to rule 19b-4 of the Act, either to extend the pilot program for an additional year or to request permanent approval of the procedures.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1990).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Americus Trust for American Telephone & Telegraph Co.
Series 2 Unit Component, No Par Value (File No. 7-6937)
Americus Trust for GTE Corp.
Unit Component, No Par Value (File No. 7-6938)
Americus Trust for International Business Machines Co.
Unit Component, No Par Value (File No. 7-6939)
Americus Trust for Mobil Corp.
Unit Component, No Par Value (File No. 7-6940)
Americus Trust for Xerox Corp.
Unit Component, No Par Value (File No. 7-6941)
Haemonetics Corp.
Common Stock, $0.01 Par Value (File No. 7-6942)
Home Insurance Co.
Series A Preferred Stock, $2.95 Par Value (File No. 7-6943)
Jones Apparel Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-6944)
National City Corp.
Depository Receipts (File No. 7-6945)
New Valley Corp.
Common Stock, $0.01 Par Value (File No. 7-6946)
Republic New York Corp.
$3.375 Cum. Conv. Pfd. (File No. 7-6947)
Safeway, Inc.
Common Stock, $0.01 Par Value (File No. 7-6948)
Security Pacific Corp.
Depository Shares (File No. 7-6949)
Sun Distributors LP
Class A Ltd. Partnership Interest (File No. 7-6950)
Telefonos de Mexico S.A. de C.V.
American Depository Shares (File No. 7-6951)
UniCARE Financial Corp.
Common Stock, No Par Value (File No. 7-6952)
Vigoro Corp.
Common Stock, $0.01 Par Value (File No. 7-6953)
Wahlco Environmental Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7-6954)
Americus Trust for American Express
Prine Component, No Par Value (File No. 7-6955)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14287 Filed 6-20-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission

("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Bairnco Corporation
Common Stock, $.05 Par Value (File No. 7–6956)
Health Equity Properties, Inc.
Common Stock, No Par Value (File No. 7–6957)
Nichols Institute
Common Stock, $.10 Par Value (File No. 7–6958)
Nichols Institute
Class C Non-Voting Common Stock, $.01 Par Value (File No. 7–6959)
Nova Nordisk A/S
Rights to Purchase American Depositary Shares, No Par Value (File No. 7–6960)
F.A. Tucker Group, Inc.
Common Stock, $.01 Par Value (File No. 7–6961)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–14821 Filed 6–20–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Albany International Corporation
Class A Common Stock, $0.001 Par Value (File No. 7–6928)
Angelica Corporation
Common Stock, $1 Par Value (File No. 7–6929)
Bancorp Hawaii Incorporation
Common Stock, $2 Par Value (File No. 7–6930)
City National Corporation
Common Stock, $1 Par Value (File No. 7–6931)
Critical Care American Inc.
Common Stock, $0.10 Par Value (File No. 7–6932)
Diagnostic Products Corporation
Common Stock, No Par Value (File No. 7–6933)
Ennis Business Forms
Common Stock, $2.50 Par Value (File No. 7–6934)
IVAX Corporation
Common Stock, $0.10 Par Value (File No. 7–6935)
UNIFI Incorporated
Common Stock, $0.01 Par Value (File No. 7–6936)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–14822 Filed 6–20–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 91–13]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 23, 1991, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the April 23, 1991 meeting.
3. Update on past resolutions.
4. Reprot from the VTS Subcommittee.
5. New Business.

A. Army Corps of Engineers Rock Dike Project for the Mississippi River.

B. Army Corps of Engineers Inner Harbor Canal Lock relocation project.

6. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eight Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eight Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–3074.

Dated: June 11, 1991.

J. M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 91–14798 Filed 6–20–91; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Tolland County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation improvement in Tolland County, Connecticut.

FOR FURTHER INFORMATION CONTACT: James J. Barakos, Division Administrator, 450 Main Street, Hartford, Connecticut 06103; Telephone: (203) 240–3705; or Edgar T. Hurle, Director of Environmental Planning,

Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109–1100; Telephone: (203) 566–5704.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (ConnDOT), will prepare an environmental impact statement (EIS) on transportation improvements in the U.S. Route 6 (U.S.6) corridor between the eastern terminus of Interstate 384 in Bolton and the western terminus of the U.S.6 Willimantic by-pass in Windham.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; (3) widening or upgrading the existing two-lane highway; and (4) constructing a four-lane, limited access highway on a new location.

The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Department of Interior (Fish and Wildlife Service), Connecticut State Historic Preservation Officer, and the Connecticut Department of Environmental Protection will be asked to be Cooperating Agencies. Letters describing the study and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Any reviewer interested in submitting comments or questions should contact the FHWA or ConnDOT at the address provided above.⅛

The draft EIS will be available for public and agency review and comment. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 5, 1991.

James J. Barakos,

Division Administrator, Hartford, CT.

[FR Doc. 91–13914 Filed 6–20–91; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 17, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8038–Q.
Type of Review: New Collection.
Title: Issuer's Information Return for Qualified Mortgage Bonds (QMBs).
Description: Form 8038–Q is used by issuers of qualified mortgage bonds to report information to the Internal Revenue Service applicable to each federally-subsidized mortgage loan financed through the issuance of a bond and to furnish certain required information to the mortgagors (borrowers). These issuers include state and local governments.
Respondents: State or local governments.
Estimated Number of Respondents: 74,500.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—5 hours, 16 minutes.
Learning about the law or the form—1 hour, 5 minutes.
Preparing copying, assembling, and sending the form to IRS—1 hour, 13 minutes.
Frequency of Response: A filing for each federally-subsidized mortgage granted.
Estimated Total Recordkeeping/ Reporting Burden: 1,212,800 hours.
OMB Number: 1545–0121.
Form Number: 1116.
Type of Review: Revision.
Title: Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual.
Description: Form 1116 is used by individuals (including non-resident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.
Respondents: Individual or households.
Estimated Number of Respondents: 589,900.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—2 hours, 44 minutes.
Learning about the law or the form—44 minutes.
Preparing the form—1 hour, 34 minutes.
Copying, assembling, and sending the form to IRS—35 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 3,309,339 hours.
OMB Number: 1545–0235.
Form Number: 730.
Type of Review: Extension.
Title: Tax on Wagering.
Description: Form 730 is used to identify taxable wagers and collect the tax monthly. The information is used to determine if persons accepting wages are correctly reporting the amount of wagers and paying the required tax.
Respondents: Individual or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 4,150.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—3 hours, 26 minutes.
Learning about the law or the form—1 hour, 4 minutes.
Preparing the form—2 hours, 6 minutes.
Copying, assembling, and sending the form to IRS—16 minutes.
Frequency of Response: Monthly.
Estimated Total Recordkeeping/ Reporting Burden: 339,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–14799 Filed 6–20–91; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Tuesday, June 18, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Administrative enforcement proceedings.

A matter relating to the Corporation's corporate activities.

A certain application of an operating noninsured institution for Federal deposit insurance.

A matter relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred by in Mr. Jonathan Fiechter, acting in the place and stead of Director T. Timothy Ryan (Office of Thrift Supervision), Mr. Dean S. Marriott, acting in place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: June 19, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–14920 Filed 6–19–91; 10:16 am]

BILLING CODE 6714–00–M

FEDERAL DEPOSIT INSURANCE CORPORATION

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 25, 1991, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 312 of the Corporation's rules and regulations, entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which partially revise the method of computing entrance fees that must be paid by insured depository institutions participating in conversion transactions (transfers between the deposit insurance funds).

Memorandum re: Changes to the Section 19 Policy Statement and Guidelines.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 18, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–14913 Filed 6–19–91; 9:10 am]

BILLING CODE 6714–00–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Tuesday, June 25, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,710

First South, FA, Pine Bluff, Arkansas

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the

provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 18, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–14914 Filed 6–19–91; 9:10 am]

BILLING CODE 6714–00–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the FDIC Open Board meeting beginning at 2:00 p.m. on Tuesday, June 25, 1991 to consider the following matters:

Summary Agenda

None.

Discussion Agenda

A. *Memorandum re:*
Interim final rule on Suspension and Exclusion of Registered Contractors and Rescission of Contracts.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: June 18, 1991.

Resolution Trust Corporation

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–14987 Filed 6–19–91; 1:55 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Trail System and Off-Road Vehicle Management and Development, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Harney, and Wheeler Counties, OR

Correction

In notice document 91-12097 beginning on page 23546, in the issue of Wednesday, May 22, 1991, in the third column, the subject heading should read as shown above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3954-7]

Approval and Promulgation of State Implementation Plans; Wyoming; Prevention of Significant Deterioration and New Source Review

Correction

In rule document 91-12395 beginning on page 23810 in the issue of Friday, May 24, 1991, make the following corrections:

§ 52.2620 [Corrected]

1. On page 23812, in § 52.2620(c)(21)(i), in the fourth line, insert *"Permit"* before *"Requirements"*.

2. On the same page, in the same section, in the fifth line, remove *"Permit Regulations"*.

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-12, 302-1

[FTR Amendment 17]

Federal Travel Regulation; Pre-Employment Interview Travel Expenses and Relocation Expenses of New Appointees

Correction

In rule document 91-12252 beginning on page 23653 in the issue of Thursday, May 23, 1991, make the following corrections:

1. On page 23656, in the first column, in the heading for PART 301-12, in the third line "ON" should read "OR".

§ 302-1.3 [Corrected]

2. On the same page, in the second column, in § 302-1.3, in item 30., in the fourth line "§ 302-1.5" should read "§ 301-1.5".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 131 and 135

[Docket Nos. 89P-0208 and 89P-0444]

Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt; Petitions To Establish Standards of Identity, and to Amend the Exist- ing Standards

Correction

In proposed rule document 91-12955, beginning on page 24760, in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24760, in the third column, in the first paragraph, in the fourth line from the bottom, "21 U S.C. 271(e)." should read "21 U.S.C. 371(e).>

2. On page 24761, in the second column, in the sixth line from the top, "approval" should read "approved".

3. On page 24763, in the third column, in § 135————————(a), in the second line from the bottom remove "not".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P-0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

Correction

In proposed rule document 91-13098 beginning on page 25385 in the issue of Tuesday, June 4, 1991, make the following corrections on page 25385:

1. In the first column, in the **SUMMARY**, in the third line; and in the third column, in the third complete paragraph, in the third line, "identify" should read "identity".

2.In the second column under **SUPPLEMENTARY INFORMATION:**, in the first paragraph, in the next to last line, insert "green" after "canned".

3. In the third column, in the first complete paragraph, in the tenth line, "amendment" should read "amendments".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-91-1525; FR-2974-I-01]

RIN 2502-AF20

Supportive Housing for Persons With Disabilities

Correction

In rule document 91-13637 beginning on page 27070 in the issue of Wednesday, June 12, 1991, make the following correction:

§ 890.245 [Corrected]

On page 27083, in § 890.245, in the second column, in the last line "(c)" should be inserted before "For".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-130-01-4212-13; GPI-227]

Realty Action; Washington

Correction

In notice document 91-12328 appearing on page 23931 in the issue of Friday, May 24, 1991, make the following correction:

.In the second column, in the first paragraph, in the last line, after "Kittitas County:", insert "T15N, R19E, WM".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-01-4214-10; IDI-3378]

Notice of Termination of Proposed Withdrawal and Reservation of Lands; Idaho

Correction

In notice document 91-8389 appearing on page 14532 in the issue of Wednesday, April 10, 1991, make the following corrections:

1. In the second column, under *Lynn Crandall Dam and Reservoir*, and "T.1N.,R.43E.,"in the line beginning "Sec. 9,", insert a "," between the second "NE¼ and "NW¼". In the line beginning "Sec.17", "NW¼NW¼" should read "NE¼NW¼"

2. In the same column, under the same heading, and under "T.2 N., R.43 E.", in the line beginning "Sec. 35, "NW¼SE¼ " should read "NW¼SW¼".

BILLING CODE 1505-01-D

federal register

Friday
June 21, 1991

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 130, et al.
Food Labeling; Declaration of Ingredients; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PARTS 101, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163, 164, 166, 168, and 169

[Docket No. 90N-0361]

RIN 0905-AD08

Food Labeling; Declaration of Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations to make ingredient labeling more useful for consumers. The agency is also responding to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) which amends the Federal Food, Drug, and Cosmetic Act (the act) by proposing to require listing of the common or usual names of (1) all ingredients in standardized foods and (2) all color additives required to be certified by FDA.

In addition, the proposed amendments will: (1) Require that, when more than one sweetener is used in a product, all sweeteners be listed together in the ingredient list under the collective term "sweeteners," in the order of predominance appropriate for the sum of all sweeteners in the food (following the collective term, each sweetener will be listed in parentheses by its common or usual name in descending order of predominance by weight in the food); (2) permit inclusion of the food source in the names of the sweeteners defined by the food standards in 21 CFR 168.110 and 168.111 (i.e., "corn sugar anhydrous" and "corn sugar monohydrate" would be permitted in addition to names already provided for in 21 CFR 168.110(b) ("dextrose anhydrous" or "anhydrous dextrose") and 168.111(c) ("dextrose monohydrate" or "dextrose")); (3) require the declaration of protein hydrolysates (hydrolyzed vegetable protein and others), including the identification of the food source, e.g., "hydrolyzed corn protein," in the list of ingredients; (4) require identification of a caseinate (e.g., sodium caseinate) as a milk derivative when used in foods that claim to be nondairy foods; (5) require that labels explain that the list of ingredients is in descending order of predominance; and (6) provide a uniform format for voluntary declaration of percentage ingredient information. However, the agency is not proposing to eliminate "and/or" labeling exemptions. The agency is proposing these actions in response to the comments that it has received on ingredient labeling issues as part of the food labeling initiative that the agency announced on August 8, 1989 (54 FR 32610). FDA also is reproposing the proposal on labeling requirements for sulfiting agents in standardized foods that it published in the **Federal Register** of December 19, 1988 (53 FR 51062). That proposal would require label declaration of sulfiting agents present in standardized foods. Additionally, that proposal set forth the circumstances under which a standardized food containing sulfiting agents conforms to the applicable food standard.

Further, the agency is responding to a citizen's petition (from the United Fresh Fruit and Vegetable Association, the Produce Marketing Association, the Food Marketing Institute, and the New York Kosher Food Advisory Council) by proposing certain exemptions from requirements for listing the specific common or usual names of preservative coatings on fresh fruits and vegetables.

DATES: Written comments by August 5, 1991. The agency is proposing that any final rule that may issue based upon this proposal become effective on the effective date of any nutrition labeling final rule based on the proposal issued in the **Federal Register** of July 19, 1990 (55 FR 29487), and the 1990 amendments.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION:

I. Background

This document is part of the Department of Health and Human Services' (DHHS) major initiative to reform the nation's food labeling system. The initiative originated in 1989 when Dr. Louis W. Sullivan, Secretary of DHHS, directed FDA to determine what changes in food labeling requirements were necessary to make the food label more useful and understandable to consumers. FDA responded to Secretary Sullivan's directive by initiating a variety of proceedings to assess the nature of the needed changes.

In the **Federal Register** of August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking (ANPRM) soliciting public comment on a wide range of food labeling issues. More than 2,000 written comments were received in response to the ANPRM. Further, the agency published in the **Federal Register** of September 20, 1989 (54 FR 38806), a notice of public hearings concerning issues raised in the ANPRM. Some 200 people testified at four major hearings held across the country, and more than 1,500 people participated in 50 local "consumer exchange" meetings. Many of the written comments and much of the oral testimony addressed ingredient labeling.

Several current requirements bear on ingredient labeling. Most significantly, in section 403(i) (21 U.S.C. 343(i)), the act requires, with certain specific exceptions, that ingredients be listed by their common or usual names on food labels. Consumers can use this information to avoid certain ingredients for health or other reasons based on personal preference. On November 8, 1990, this section of the act was amended by the 1990 amendments (section 7 of Pub. L. 101-535) to eliminate the exceptions from the ingredient listing requirements that had existed for standardized foods and for colorings required to be certified by FDA under section 706(c) of the act (21 U.S.C. 376(c)). As a result, consumers will get more complete information about the components of the foods they eat.

In addition, FDA has established in 21 CFR 101.4(a)(1) a requirement that the ingredients of a food be listed in descending order of predominance by weight on either the principal display panel or on the information panel of the food label. This requirement is intended to assist consumers with purchase decisions by providing them with information on the relative levels of ingredients in the food. They can thus use the order of predominance information in making value comparisons between similar foods.

The ingredient listing requirements are not intended, however, to assure that the food label provides consumers with all the information they may need. There are other labeling regulations that provide additional, more specific, consumer assistance. For example, FDA adopted the nutrition labeling regulation, 21 CFR 101.9, to enable consumers to compare the nutritional attributes of different foods and to plan nutritionally sound diets. FDA has proposed (55 FR 29487, July 19, 1990), and Congress has acted in the 1990

amendments to strengthen the nutrition labeling regulation by extending its provisions to most foods. In addition, considerable information about a food is communicated to consumers through other kinds of label statements (e.g., "low sodium," "artificially sweetened," and "reduced calories") that are defined in separate regulations.

In the ANPRM, the agency asked whether: (1) Major ingredients should be listed by percentage; (2) current "and/or" labeling regulations should be revised (e.g., should this labeling be permitted for sweeteners and prohibited for fats and oils); (3) ingredient labeling regulations should be expanded to require labeling of specific spices, colorings, and flavorings; (4) ingredient labeling of "fast" foods should be required; (5) the agency should act, either administratively or by seeking legislation, to require labeling of all ingredients in standardized foods as is now required for nonstandardized foods; and (6) ingredient labeling format should be revised to be more informative to consumers.

As stated above, Congress has acted with respect to at least two of these issues. Moreover, after consideration of the written comments and oral testimony that it received in response to the ANPRM, FDA has reached tentative conclusions about the rest of these ingredient labeling issues, as well as about other issues raised in the comments. In reaching these tentative conclusions, the agency considered other relevant background information in addition to the comments. For example, in the **Federal Register** of December 21, 1979 (44 FR 75990), following a food label review that FDA conducted with the Department of Agriculture (USDA) and the Federal Trade Commission (FTC), FDA published tentative positions on many of the same food labeling issues that have been identified in the current labeling initiative. These tentative positions were developed after consideration of oral comments at a series of hearings in 1978 as well as written comments. Information from these earlier comments confirms longstanding consumer interest in certain labeling information.

A complete discussion of the agency's tentative conclusions with respect to ingredient labeling, as well as of the effects of the congressional action, follows.

II. Ingredients of Standardized Foods

Consumer comments responding to the 1989 ANPRM expressed considerable interest in the declaration of all ingredients in foods for which there are standards of identity.

Before the 1990 amendments were enacted, the act provided FDA with authority to require the declaration of optional ingredients in standardized foods but not the declaration of mandatory ingredients (21 U.S.C. 343 (g) and (i) (1972 and 1989 supp.)). In the absence of statutory authority, FDA could not require complete listing of all ingredients in standardized foods. However, the 1990 amendments revised section 403(i) of the act to remove the exemption for standardized foods from the requirement for the listing of all food ingredients. Effective November 8, 1991, the act provides for the listing of all ingredients in standardized foods.

To make its ingredient labeling regulations consistent with the 1990 revision of section 403(i) that pertains to standardized foods, FDA is proposing to adopt new paragraph (e) in 21 CFR 130.3. The proposed paragraph specifies that all mandatory and optional ingredients of standardized foods must appear on food labels in accordance with the requirements of part 101, except that where a definition and standard of identity contains a specific provision with respect to the declaration of optional ingredients, the optional ingredients may be declared in accordance with that provision.

This optional ingredient exception is included to permit continued use of alternatives to the labeling requirements of part 101 where compliance with those requirements would be impracticable. For example, FDA is retaining a number of existing optional ingredient listing provisions that permit collective terms to be used rather than specific ingredient names where similar provisions are not present in part 101. Thus, the agency is retaining the provisions for listing the term "enzymes" rather than the specific name of the enzyme and the terms "milkfat and nonfat milk" or "nonfat milk and milkfat" for dairy ingredients in § 133.106, blue cheese; § 133.133, cream cheese; § 133.164, nuworld cheese; and a number of other standards.

FDA is also proposing to amend all the standards of identity to require that all ingredients be declared on the label in accordance with the applicable sections of parts 101 and 130. Most of the standards already provide for declaration of all optional ingredients used in accordance with the applicable sections of part 101 and the wording in these standards has been amended accordingly. Where there is no existing provision for ingredient labeling, FDA has added a paragraph to the standard to include the new labeling provisions.

The agency has reviewed all of the standards of identity in 21 CFR parts 131 through 169 to determine which standards provide for exemptions in the labeling of some ingredients. A number of these exemptions are already included in part 101 and do not need to be duplicated in the individual standards.

Several of the dairy standards contain exemptions that provide for the declaration of the use of bacterial cultures on the label by the word "cultured" followed by the name of the substrate, e.g., "cultured cream" or "made from cultured skim milk." Other cheese standards provide for the use of terms such as "cream" for plastic cream and dried cream, "milk" for concentrated milk and dried milk, "skim milk" for concentrated skim milk and nonfat dry milk, and "whey" for cheese whey, concentrated cheese whey, and dried cheese whey. Section 101.4(b) provides for these labeling exemptions, and FDA believes that the language does not need to be repeated in each standard of identity.

The standard in § 150.110 for fruit butter states that if sugar or invert sugar is the sweetener used, the term "sugar" may be used, and if the sweetener used is derived from corn the term "corn sweetener" may be used. FDA proposes to remove this provision and require that the ingredient declaration for fruit butter conform to regulations in part 101. As discussed subsequently in section VI.B.1. of this preamble, the agency is terminating the rulemaking to permit the use of the terms "sugar" and "corn syrup" as collective ingredient designations for foods subject to part 101 labeling regulations. The agency has determined that declaration of specific names for sweeteners within these collective categories is practicable. Consistent with this action, the agency has tentatively concluded that declaration of the specific names of sweeteners is also practicable for standardized foods.

The standards in § 164.110 and § 164.150 for mixed nuts and peanut butter both provide for the use of the term "hydrogenated vegetable oil" or "vegetable oil" with the optional use of the name of the vegetable source. In addition, § 164.110 requires that when antioxidant preservatives are used in the finished food, the label shall state that these ingredients are added either as preservatives or to inhibit rancidity. The agency proposes to delete the requirements for label declaration of optional oils and chemical preservatives used in these foods since required label declarations are clearly delineated in §§ 101.4(b)(14) and 101.22(j), respectively. Moreover, the "and/or"

labeling exemption in § 101.4(b)(14) should effectively eliminate the need for collective names for vegetable oils in these standards.

FDA points out that it has proposed revision of some of the cheese standards (October 4, 1977, 42 FR 53970) and all the cacao products standards (January 25, 1989, 54 FR 3615). In some of these proposed amendments one or more paragraphs have been added to or deleted from the standards. If the proposals on the standards for cacao products or for cheeses become final rules before this proposal becomes final, the paragraph designations for sections affected by this document will be redesignated accordingly.

Some current standards require that optional ingredients be declared on the principal display panel of the label or wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase. FDA is requesting comment from interested individuals on whether these requirements are needed if all of the ingredients are declared elsewhere on the label.

In addition, the agency is proposing changes in a number of regulations in part 101 to reflect the new ingredient listing requirements in section 403(i) of the act. FDA is proposing to revoke § 101.6, which provides guidance on the voluntary listing of ingredients in standardized foods, because such guidance is no longer valid with the new mandatory ingredient listing requirements. For this same reason, the agency is proposing to revise 21 CFR 101.4(a)(1) to clarify that all standardized foods must comply with § 101.4, rather than only those foods specifically required to do so by the standards.

FDA is also proposing to modify 21 CFR 101.4(b)(2)(i). This regulation provides that when an ingredient itself contains two or more ingredients, the ingredient may be declared by listing its common or usual name followed by a parenthetical listing of all ingredients contained therein in descending order of predominance "except that, if the ingredient is a food subject to a definition and standard of identity * * *, only the ingredients required to be declared by the definition and standard of identity need be listed * * *." In view of the new statutory requirements for the listing of all ingredients in standardized foods, this exception is no longer appropriate. The agency is proposing to revise this exception to make clear that a standardized food is subject to the same treatment as any other food, except that where the food is subject to a standard that makes specific provision for the labeling of optional ingredients, the optional ingredients may be declared in accordance with those provisions.

There is an additional issue that relates to the ingredients of standardized foods. On December 19, 1988 (53 FR 51062), FDA proposed to adopt § 130.9. That proposed regulation addressed the circumstances under which the presence of sulfiting agents in a standardized food would not render the product misbranded under section 403(g) of the act. For administrative efficiency, and because of the relation that proposed regulation has to ingredient labeling, FDA is reproposing § 130.9 in this document. The preamble to the December 19, 1988, proposal is hereby incorporated in this final rule. FDA will consider all comments received in response to the earlier proposal and to this reproposal in deciding what action to take on this issue.

III. Flavors, Colors, and Spices

A. Background

Before passage of the 1990 amendments, the act provided that flavorings, colorings, and spices need not be declared by their common or usual name but could be designated by the collective terms "flavorings," "colorings," and "spices" (21 U.S.C. 343 (g) and (i) (1972 and 1989 supp.)). The 1990 legislation amended 21 U.S.C. 343(i) with respect to colorings, so that after November 8, 1991, only colorings not required to be certified by FDA under 21 U.S.C. 376(c) will be exempt from label declaration by their common or usual name. Color additives for which certification is required will have to be declared in this way.

In the 1989 ANPRM, the agency had requested comments on whether it should seek legislation to require the declaration of the flavorings, colorings, and spices in a food (54 FR 32613). FDA received comments on this issue from a wide range of sources, including consumers, consumer organizations, professional associations, government agencies, industry, and industry trade associations. Many of these comments specifically addressed the question of how foods should be labeled with regard to the presence of two food components, monosodium glutamate and hydrolyzed vegetable protein. These comments and the agency's responses, along with the agency's response to the 1990 amendments concerning declaration of colorings, are discussed in the following three sections.

B. General Labeling of Flavorings, Colorings, and Spices

1. Comments

Consumer comments largely favored the complete declaration of specific flavorings, colorings, and spices on food labels. In support of this position, consumers generally asserted that they have a right and, in many cases, a need to know the identity of all ingredients in their food. One consumer whose family is on a medically imposed restricted diet because of food allergies, commented that labels can never be too detailed for the food-sensitive population. Another consumer commented that "the health benefits from revised food labeling will more than justify the economic costs of this action and food manufacturers will definitely notice an increase in sales if consumers are assured that their purchases meet their needs."

Some comments stated that the agency should seek legislation requiring that flavorings, colorings, and spices be specifically declared on food labels. One recommended that FDA give top priority to this endeavor. These and other comments stated that incomplete declarations were inadequate for individuals who experience hypersensitivity reactions to these ingredients. Other comments favored label declaration of these ingredients only if the additive is suspected or known to have an adverse health effect in certain individuals.

Comments from the food industry generally opposed any agency action that would require the complete declaration of flavorings, colorings, and spices on food labels. Some comments maintained that there is no public health benefit to be derived from requiring complete disclosure of these ingredients, and that the unnecessary costs to the industry of complying with such requirements would ultimately be borne by consumers. Several of these comments maintained that the identities of these ingredients as used in foods are valuable trade secrets and should not be required to be disclosed on the food label. Other comments maintained that complete declaration of these ingredients would be difficult to achieve within available labeling space and would create consumer confusion because of the complexity of the technical names of these types of ingredients. One comment stated that the increased complexity of food labels would detract from public health objectives.

Several industry comments acknowledged that it would be appropriate to require the label

declaration of a specific flavoring, coloring, or spice when public health concerns justify such a requirement. One industry comment stressed that the basis for imposing such a requirement for a particular ingredient should be a scientific consensus. This comment argued that available data should make it clear that a significant portion of the population has a need to know for health reasons that the ingredient is present in food, and that procedural safeguards, e.g., public notice and opportunity for comment, should be built into any regulatory requirement. One comment stated that FDA already has the legal authority to require label declaration in such instances, as it did when it required the label declaration of the color additive FD&C Yellow No. 5 in foods (see 42 FR 6835, February 4, 1977 and 44 FR 37212, June 26, 1979).

2. Agency Response

The agency has carefully considered all the comments that it received concerning general labeling issues for flavorings, colorings, and spices. Comments seeking the required declaration of colorings added to food were largely prompted by concerns regarding chemically synthesized color additives. Congress agreed with these concerns in amending the act to require the declaration of these colorings, which are also known as "coal tar dyes" (Ref. 1) and which collectively comprise the food colorings for which certification is required under 21 U.S.C. 376(c). FDA is therefore proposing to amend the labeling regulations for colorings in 21 CFR 101.22(k) to reflect the requirements of the 1990 amendments to the act.

Congress did not, however, revoke the exemption from required declaration for spices and flavorings or for noncertified colors. The agency encourages firms to voluntarily declare spices when they are added to food because FDA supports the declaration of ingredients on food labels to the extent that it is practical. In most cases, spices can be declared without requiring undue label space or divulging valuable trade secrets. As for flavorings, the agency believes that the exemption from required declaration for these ingredients is appropriate for several reasons:

(1) The mandatory declaration of flavorings would require considerable additional label space in many instances because of the relatively large number of flavor ingredients used in certain foods, and it would thus make many food labels unduly lengthy without significantly enhancing the information to the consumer about the basic composition, economic value, or nutritional value of the product.

(2) The identities of the flavoring ingredients of a food are legitimate trade secrets of considerable commercial value to the food processor and, in general, should not be required to be disclosed in the absence of a public health need.

(3) If it becomes necessary for pubiic health or other reasons to require the label declaration of any food ingredient that is exempt from required label declaration, the agency can establish such a requirement as it has done for flavorings, colorings, and spices when used in infant foods (§ 105.65) and hypoallergenic foods (§ 105.62) and for the color additive FD&C Yellow No. 5 when used in foods generally.

C. Label Declaration of Color Additives

1. FDA Action in Response to 1990 Amendments Requiring Declaration of Certified Color Additives

As a result of the 1990 amendments to the act, certified color additives are no longer exempt from required label declaration. As a result of this change in the statute, under 21 U.S.C. 343(i), each certified color additive used in a food must be declared by its common or usual name, while noncertified colorings may still be declared collectively. FDA is proposing to add a new paragraph to the food labeling regulations to elucidate these declaration requirements for colorings in food along with several exceptions to the requirements.

The proposed new paragraph, 21 CFR 101.22(k), requires that color additives subject to certification be declared by the common or usual names established in 21 CFR parts 74 and 82, wherein certified color additives permitted for use in foods and their lakes (i.e., insoluble derivatives of the certified colorings) are listed.

The agency believes that the declaration of a certified color additive by its common or usual name meets the requirements of both 21 U.S.C. 343 (i) and (k), which requires that the label of a food that bears or contains an artificial coloring must state this fact. The common or usual names of certified color additives used in food, such as FD&C Blue No. 1 and FD&C Yellow No. 5, are broadly understood to be names of artificial colorings when they are encountered in an ingredient list. Therefore, in 21 CFR 101.22(k)(1), the agency is proposing to permit certified color additives to be declared simply by their common or usual names without requiring the use of a term explaining the function of these ingredients.

The proposed regulation also provides guidance concerning appropriate terminology for declaring the presence in food of the noncertified colorings that are listed in part 73. As stated above, the declaration of a coloring in the ingredient list must comply with the requirements of 21 U.S.C. 343 (i) and (k). However, because FDA considers any coloring that is added to food to be artificial, FDA has not required that the term "artificial" be included in the required label statement as a condition of compliance with 21 U.S.C. 343(k) (Ref. 2). The agency considers the term "color added," as well as such terms as "artificial color" or "artificial color added," to be acceptable for the purpose of meeting the requirements of this section because these terms clearly indicate the addition of coloring to a food.

Because industry has used terms such as "color added" in good faith to declare the presence of an artificial color, the agency tentatively concludes that it would not serve a useful purpose to change its position at this time. Therefore, the agency is proposing in 21 CFR 101.22(k)(2) to include the above terms as examples of appropriate terms for the declaration of noncertified colorings in an ingredient list. The proposed regulation also allows the use of any other equally informative term that makes clear that a coloring has been added to the food.

The proposed regulation also cites terms such as "colored with ——" and "——(color)" as examples of appropriate terms for the voluntary declaration of a noncertified coloring when the blank is filled with the name of the listed coloring in 21 CFR part 73. Thus, a term such as "caramel (color)" is appropriate for label declaration of this noncertified coloring.

The proposed regulation also elucidates the exceptions to the general requirements for declaring certified and noncertified colorings. One exception, set forth in proposed 21 CFR 101.22(k)(3), applies to butter. cheese, and ice cream, which are exempt from the requirements of 21 U.S.C. 343 (i) and (k) except where declaration of a coloring is required under part 74 (21 CFR part 74) to assure safe conditions of use. Such a situation applies when the coloring FD&C Yellow No. 5 is used in food. Section 74.705 requires the declaration of FD&C Yellow No. 5 when this color additive is used in foods, including butter, cheese, and ice cream. Moreover, pursuant to a notice published in the **Federal Register** of December 6, 1988 (53 FR 49138), the agency intends to issue a proposal shortly to require label declaration of FD&C Yellow No. 6 to assure safe conditions of use when this coloring is

used in drugs. (The notice also stated that the agency would propose a label declaration requirement for this color additive when it is used in food, but this intention has been obviated by the 1990 amendments.)

In proposed 21 CFR 101.22(k)(3), the agency is recommending that manufacturers voluntarily declare all colorings in butter, cheese, and ice cream. The agency believes that this practice will provide consumers with more information consistent with their stated interests, and that it will not consume undue label space or divulge trade secrets. This recommendation is currently contained in the standard of identity for ice cream and frozen custard in 21 CFR 135.110.

The other exception to the general requirements for declaring colorings applies to hypoallergenic foods and infant foods. The proposed regulation, in 21 CFR 101.22(k), will make it clear that these foods are subject to the labeling requirements of 21 CFR 105.62 and 105.65, which require the declaration by common or usual name of all ingredients including flavorings, colorings, and spices in these foods.

2. Use of Abbreviated Names to Declare Certified Color Additives

In the **Federal Register** of June 6, 1985 (50 FR 23815), the agency proposed to permit the use of abbreviated names for certain certified color additives in declaring their presence in foods, drugs, cosmetics, and medical devices. Previously, on January 28, 1983, in response to two petitions from the Grocery Manufacturers of America, the agency issued an advisory opinion saying that it would not object to the use of abbreviated names in declaring certified color additives used in foods (Ref. 3). In the advisory opinion, the agency stated that although it believed that the common or usual names by which the color additives are listed in parts 74 and 82 are the most appropriate names for identifying these color additives, it also believed that more manufacturers would voluntarily declare color additives in an ingredient list if the agency permitted the use of abbreviated names for such declaration (e.g., "FD&C Blue No. 1" could be declared simply as "Blue 1"). Because such a practice would provide more information to consumers than use of the collective term, which at that time satisfied the requirements of the act, the agency permitted the use of the abbreviated names and had intended to finalize the 1985 proposal to codify its policy and extend its application to drugs, cosmetics, and medical devices.

The 1990 amendments to the act require that certified colorings used in food be declared, and thus it is no longer appropriate for FDA to finalize the 1985 proposal with respect to foods as a means of encouraging the voluntary declaration of these color additives. However, since the agency issued its advisory opinion, many food firms that have voluntarily declared color additives have used the abbreviated names. These names have gained a degree of recognition as names for these color additives, while no problems with consumer understanding of these names have come to light. The agency also believes that the use of the abbreviated names has some advantage for industry because they consume less label space. Moreover, Congress noted the utility of the abbreviated names in its debate on requiring the declaration of certified color additives (Ref. 1). For these reasons, the agency believes that the option to use the abbreviated names for declaring certified color additives in foods should be continued, and therefore it is proposing in § 101.22(k)(1) not to require the inclusion of the "FD&C" prefix in the declaration of a certified coloring in the ingredient list. Furthermore, the agency intends to issue shortly a tentative final rule to codify the provisions in the 1985 proposal with respect to certified color additives used in foods, drugs, cosmetics, and medical devices.

The agency solicits comments on its tentative decision to proceed with the rulemaking to establish abbreviated names for the declaration of certified color additives. The agency is also interested in receiving comments on whether such a tentative final rule should include abbreviated names for color additive lakes and suggestions for such names. No such names were included in the 1985 proposal.

D. Labeling of Protein Hydrolysates Used for Flavor-Related Purposes

1. Composition, Preparation, and Uses of Protein Hydrolysate

Protein hydrolysates are used in many foods as flavors and flavor enhancers. Certain protein hydrolysates can also be used in foods for purposes not related to flavoring, including as a formulation aid, leavening agent, stabilizer, thickening agent, nutrient supplement, and protein source. However, the latter uses are not the subject of this section, inasmuch as these nonflavor-related uses were never exempt from the ingredient declaration requirements of the act.

a. *Composition.* Protein hydrolysates are acid or enzymatically treated proteins from certain food sources. The principal components of protein hydrolysates are amino acids (and their salts), which are the basic biochemical building blocks of protein molecules; peptides, which are small fragments of protein molecules containing intact amino acid units; salt (in some products); ash; organic acids, which are substances produced in normal cell metabolism; and other nonproteinaceous source-derived materials such as carbohydrates and lipids (Ref. 4).

Protein hydrolysates are produced in such a manner that the amino acids present as a result of the hydrolysis of the protein source exist largely in the salt form of the amino acid (Ref. 4). Because glutamic acid is the predominant naturally occurring amino acid in the protein sources from which protein hydrolysates are derived, glutamates, the salts of glutamic acid, are the predominant amino acid salts in these products and are usually present at levels of 5 to 15 percent of the protein hydrolysate (Ref. 4). In the instances where sodium is added in the manufacture of protein hydrolysates following hydrolysis, the glutamate fraction of the product largely consists of monosodium glutamate, a sodium salt of glutamic acid.

b. *Preparation.* Protein hydrolysates used for flavor-related purposes are products prepared either by the acid hydrolysis of protein derived from a plant, edible yeast, or animal source or from the enzymatic hydrolysis of edible strains of yeast.

i. *Acid-hydrolyzed protein hydrolysates.* Acid-hydrolyzed protein hydrolysates used for flavor-related purposes may be prepared from protein-containing matter derived from plant sources, such as soy meal, wheat gluten, corn gluten, rice flour, and peanut meal; from edible strains of yeast; or from certain animal sources such as casein, a protein derived from milk (Ref. 4). The manufacturing process typically employs food-grade hydrochloric acid and temperatures of 100 to 130° C to chemically digest the source protein (Ref. 4). Sodium carbonate is typically used to neutralize the product following acid treatment, and thus the salt content (sodium chloride) of a typical acid-hydrolyzed protein hydrolysate is about 40 percent (Ref. 4). Because of the high degree of hydrolysis that occurs as a result of the acid digestion of the source protein, 75 to 95 percent of the amino acids from the source protein exist as free amino acids and their salts, with the remainder of the amino acid units existing as components of peptides (Ref 4).

ii. *Enzymatically hydrolyzed protein hydrolysates.* The principal enzymatically hydrolyzed protein hydrolysates used for flavor-related purposes are autolyzed yeast extracts, which are derived from edible yeast strains such as *Saccharomyces cerevisiae* (Ref. 4). Autolyzed yeast extracts are prepared by heating yeast cell preparations under highly controlled conditions, which causes the yeast cells to rupture, allowing the endogenous proteolytic enzymes of the yeast to partially hydrolyze the yeast protein (Ref. 4). Because enzymatic hydrolysis is less complete than acid hydrolysis, the free amino acid content of autolyzed yeast extracts can be as little as 45 percent (Ref. 4).

Because enzymatically hydrolyzed protein hydrolysates do not require neutralization, the salt (sodium chloride) content is generally lower than that of acid hydrolyzed protein hydrolysates (Ref. 4). However, some of these products do contain added salt (Ref. 4). Because whole cells are used as the starting material, autolyzed yeast extracts, unlike acid-hydrolyzed protein hydrolysates, contain significant levels of non-proteinaceous source components (Ref. 4).

c. *Uses of protein hydrolysates in foods.* Protein hydrolysates are used as flavorings and flavor enhancers in foods such as baked goods, soups and soup mixes, gravies, sauces, seasonings, relishes, and salt substitutes (Ref. 4). Data provided to the agency by industry on the use of protein hydrolysates in foods show that the average use level of acid-hydrolyzed protein in 70 different foods was 0.60 percent with a range of 0.19 to 1.30 percent (Ref. 4). The average use level of autolyzed yeast extract in 36 processed foods was 0.30 percent with a range of 0.10 to 0.50 percent (Ref. 4).

2. Regulatory Status of Protein Hydrolysates Used for Flavor-Related Purposes

a. *GRAS status and uses in standardized foods.* FDA has stated in a number of letters that protein hydrolysates are GRAS for use in food (Ref. 5). However, FDA is conducting a comprehensive review of the safety of the human food ingredients that the agency considered to be GRAS in 1969. As part of this review, FDA published a proposal in the **Federal Register** of December 8, 1983 (48 FR 54990), to affirm that several protein hydrolysates, including acid-hydrolyzed plant protein, acid-hydrolyzed casein (a milk protein), and acid- and enzymatically hydrolyzed yeast protein, were GRAS for use as firming agents, flavor enhancers, and flavoring agents and adjuvants in foods other than infant formulas and baby foods. (In the 1983 proposal, the agency also proposed to affirm that the use of enzymatically hydrolyzed casein (another protein hydrolysate which is not used for flavor-related purposes) as a nutrient supplement and as a source of protein is GRAS.) FDA has not taken final action on this proposal.

Protein hydrolysates are listed as optional ingredients in the standards of identity for certain foods. Hydrolyzed vegetable protein (that is, protein hydrolysates derived from vegetable sources) and autolyzed yeast extract are listed as optional ingredients in canned vegetables in 21 CFR part 155, and hydrolyzed protein and hydrolyzed protein with reduced monosodium glutamate content are listed as optional ingredients in canned tuna in § 161.190. Hydrolyzed plant protein, autolyzed yeast extract, and milk protein (casein) hydrolysates are listed by USDA as flavoring agents that can be used in certain meats and meat products in 9 CFR part 319.

b. *Labeling of protein hydrolysates.* Section 101.35 of FDA's regulations (first published as a "Statement of General Policy or Interpretation" in the **Federal Register** of June 7, 1951 (16 FR 5394)) sets out the agency's policy on the declaration of certain hydrolyzed vegetable protein products when used as food ingredients. This regulation states that when the specified hydrolyzed vegetable proteins are used as ingredients in a fabricated food, they may be declared as "salt and hydrolyzed vegetable protein" (or "salt and hydrolyzed plant protein").

Moreover, in letters, FDA employees have stated that because protein hydrolysates are considered to be flavor enhancers (and not flavorings), they are required to be declared by their common or usual name in the ingredient list when used in foods (Ref. 6). In a 1988 letter, an FDA employee elucidated the agency's position on how canned tuna should be labeled when hydrolyzed casein (a milk protein) is used as an optional ingredient (Ref. 7). This letter involved the standard of identity for canned tuna (21 CFR 161.190), which requires that when hydrolyzed protein is used to season the product, the label declare the ingredient by name by stating "Seasoned with (name of seasoning)." In commenting on whether it was appropriate to use the term "hydrolyzed protein" to declare hydrolyzed casein in canned tuna, the agency stated that the designation "hydrolyzed protein" in the standard is a general designation for a group of ingredients. However, for labeling purposes, the source of the protein is "important information for consumers with allergy and religious concerns," and "if hydrolyzed milk protein is added to canned tuna it should be declared by that name in the ingredient statement," i.e., not by the general designation "hydrolyzed protein."

Yet, despite the existence of § 101.35 and the position that agency employees have taken, many in industry have taken the position that when protein hydrolysates are added to food as a flavoring, they need not be declared by name in the ingredient list. Instead, they have listed these ingredients as "flavor" or "natural flavor."

3. Issues Associated With the Declaration of Protein Hydrolysates in the Ingredient List

a. *International hydrolyzed protein council petition.* A citizen petition submitted to the agency by the International Hydrolyzed Protein Council (the Council) in 1985 asked the agency to revoke § 101.35 because the regulation is obsolete. The petition pointed out that this regulation refers only to hydrolyzed vegetable protein substances, whereas the agency, in the period since this regulation was established, has come to recognize protein hydrolysates derived from other sources such as casein (milk protein) and yeast. The petition also stated that one type of protein hydrolysate described in the regulation, "hydrolyzed vegetable protein with reduced monosodium glutamate content," is no longer produced.

The Council also requested that FDA issue an advisory opinion on the propriety of listing hydrolyzed vegetable proteins only as "flavor" or "natural flavor" in the ingredient list when these ingredients are used as flavoring in foods. The Council argued that the flavor uses of hydrolyzed vegetable proteins come under the act's exemption from required ingredient labeling of flavorings, colorings, and spices. The Council asserted that the inclusion of the term "protein hydrolysate" in the definition of the term "natural flavor" in 21 CFR 101.22 leaves no question that the agency, in establishing the definition, "intended to, and did, include all protein hydrolysates used as flavors (including hydrolyzed vegetable protein) within the definition of natural flavor," and that in so doing, the agency "intended that hydrolyzed vegetable protein (and all other natural flavors) could be listed simply as 'natural flavor' in a list of ingredients." FDA is responding to the Council's petition in this rulemaking.

b. *Issues raised in comments concerning declaration of protein hydrolysates.* Some consumer comments to the 1989 ANPR stated that FDA should require the declaration of protein hydrolysates in the ingredient list, and that such declaration should identify the protein source. The rationale expressed in these comments is that some individuals are allergic to some of the food sources from which protein hydrolysates are prepared, and declaration of the protein hydrolysate and its source food is necessary to alert those individuals to the presence of these ingredients in a food. For instance, one consumer stated that her son is allergic to peanuts, which may be used as a source material for protein hydrolysates, and that the term "vegetable protein" is too general for labeling purposes.

Other consumer comments expressed concern about the presence of monosodium glutamate as a component of protein hydrolysates. In general, these comments urged the agency to require that monosodium glutamate be declared on the label as a component of protein hydrolysates, just as it must be declared when it is used as an ingredient of a food. The comments argued that this step is necessary because monosodium glutamate causes hypersensitivity reactions in some individuals. One comment stated that under the current labeling standards, it is often not possible to determine whether monosodium glutamate is present in a food, no matter how careful a consumer is in trying to avoid this substance.

Another comment, however, disputed the allegations of hypersensitivity reactions to monosodium glutamate, claiming that no scientific evidence exists to substantiate such reactions. In addition, in its 1985 request for an advisory opinion, the Council asserted that some persons "wrongly" believe that they may be allergic to some constituents of hydrolyzed vegetable protein.

c. *Agency considerations.* In response to the Council's petition and the consumer comments, FDA considered: (1) Whether protein hydrolysates are exempt from required ingredient labeling when used for flavor-related purposes in foods; (2) whether the possibility of adverse reactions to the food source of a protein hydrolysate justifies a requirement that the food source be identified in the ingredient list along with the protein hydrolysate; and (3) whether the glutamate component of protein hydrolysates should be separately declared when protein hydrolysates are added to foods because of the possibility of adverse reactions to monosodium glutamate. The relevant information considered by the agency, and its tentative conclusions, are discussed in the following two sections.

4. Declaration of Protein Hydrolysates in the Ingredient List

a. *Flavors and flavor enhancers.* The scientific and technical literature recognizes several different categories of substances that contribute to the flavor characteristics of food. They are flavorings, flavor enhancers, and flavor potentiators (Refs. 8 through 9). While there are hundreds of flavorings that are available for use in food, there are only a small number of substances that have been classified in the technical literature as flavor potentiators or as flavor enhancers (Ref. 8). Generally, a flavoring is considered to be a substance that has a flavor of its own at the level at which it is used in a food, while flavor enhancers and flavor potentiators do not themselves impart flavor but rather intensify in some manner the flavors that are naturally present or are added to food (Refs. 8 through 10). Although food technologists distinguish flavorings from flavor enhancers and flavor potentiators, the terminology used for the latter two categories of substances is not uniform in the literature. For example, some references classify flavor enhancers as substances that simply intensify flavor sensations and flavor potentiators as substances that intensify flavor sensations through a synergistic mechanism in combination with other ingredients (Ref. 19). Others do not distinguish between enhancers and potentiators and simply refer to all such substances as "potentiators" (Ref. 8).

FDA's regulations describing the various functional effects of human food ingredients differentiate between "flavoring agents and adjuvants" and "flavor enhancers." "Flavoring agents and adjuvants" are defined in 21 CFR 170.3(o)(12) as "substances added to impart or help impart a taste or aroma in food." "Flavor enhancers" are defined in § 170.3(o)(11) as "substances added to supplement, enhance, or modify the original taste and/or aroma of a food, without imparting a characteristic taste or aroma of its own." FDA considers the latter definition to be broad enough to include the substances referred to in the literature as "flavor enhancers" and as "flavor potentiators."

b. *FDA's treatment of flavor enhancers.* Because flavor enhancers are not flavorings, they are not exempt from the ingredient declaration requirements of the act and thus must be declared in the ingredient list by their common or usual names (21 U.S.C. 343(g) and (i)). Historically, FDA has addressed the relatively few labeling questions that have arisen concerning flavor enhancers on a case-by-case basis.

The most widely used flavor enhancer is monosodium glutamate. In a trade correspondence letter designated as "T.C. 233," which was issued in 1940, the agency stated that monosodium glutamate was an artificial flavoring when added to food and must be declared as such in the ingredient list. During the late 1940's however, increased supplies of monosodium glutamate became available to the food industry, prompting a surge of interest in its use in foods. Studies began appearing in the scientific literature that demonstrated that monosodium glutamate markedly enhanced the flavor of food to which it was added while being scarcely noticeable itself. In the **Federal Register** of May 27, 1949 (14 FR 2791), the agency issued a "Statement of General Policy or Interpretation on the Labeling of Foods Containing Monosodium Glutamate" as 21 CFR 3.10, in which it stated:

> In the light of information now before the Food and Drug Administration on the manner of use of monosodium glutamate in foods, this Agency is not disposed to maintain the position that monosodium glutamate be designated as an artificial flavoring on labels of foods to which it is added. Where it is used as an ingredient in a food for which a standard of identity has not been promulgated under the Federal Food, Drug, and Cosmetic Act, its presence should be declared on the label by its common or usual name, monosodium glutamate, in compliance with section 403(i)(2) of the act.

In 1973, the agency amended the food labeling regulations (38 FR 20718, August 2, 1973) to clarify its policy on several issues pertaining to the labeling of flavorings, colors, and spices. Section 3.10 was incorporated into the new regulations as 21 CFR 1.12(h)(5) (since recodified as 21 CFR 101.22(h)(5)), which requires that any monosodium glutamate used as an ingredient in food be declared in the list of ingredients by its common or usual name. In the preamble to the 1973 final rule, the agency stated that monosodium glutamate "is not a spice or flavor, and it must be declared by its common or usual name."

In other specific situations, the agency has simply rendered informal opinions in letters concerning the application of the act's labeling requirements to specific flavor enhancers. For example, the agency did so with respect to a class

of flavor enhancers generically referred to as the "5'-nucleotides," which includes guanosine 5'-monophosphate, disodium guanylate, inosine "5'-monophosphate, and disodium inosinate (Ref. 11). A regulation clarifying the labeling requirements for these ingredients has not been necessary. Since they became widely available in the 1960's, these substances have never been regarded as anything other than flavor enhancers (Ref. 12), and thus, when they are used in a food, they must be declared in the ingredient list by their common or usual name.

c. *Protein hydrolysates as flavors and flavor enhancers.* Protein hydrolysates are recognized in the scientific literature as the most significant source of meat-like flavors available to the food industry, with their unique flavoring characteristics being dependent upon the protein source and the conditions of hydrolysis (Ref. 13). At the same time, the literature stresses the importance of a significant glutamic acid fraction in the protein source material for achieving an acceptable protein hydrolysate and emphasizes the important functional role of the glutamate component of protein hydrolysates as a flavor enhancer (Refs. 8, 14, 15). In fact, the protein fractions of the common protein hydrolysate sources all contain significant levels of glutamic acid, with the glutamic acid percentages of the protein fractions being: Wheat gluten, 36 percent; corn gluten, 24.5 percent; peanut flour, 19.5 percent; soybean flour, 21 percent; casein, 22 percent; rice, 24.1 percent; and yeast, 18.5 percent (Ref. 15).

Protein hydrolysates are sometimes used as substitutes for monosodium glutamate (Refs. 15, 16) and as sparing agents (less costly partial substitutes) for 5'-nucleotides (Ref. 9). These uses attest to the ability of protein hydrolysates to function as flavor enhancers. The agency thus finds that the available literature and other technical data on protein hydrolysates (Refs. 8, 17) demonstrate that these ingredients function as both flavorings and flavor enhancers. The literature even suggests that the flavor enhancement occurs whenever protein hydrolysates are used (Ref. 10). Therefore, FDA tentatively concludes that wherever a protein hydrolysate is added to a food for its effect on flavor, it functions both as a flavoring and as a flavor enhancer.

d. *Tentative conclusion to require labeling.* This tentative conclusion has a significant effect on the circumstances in which protein hydrolysates must be declared in the ingredient list. As stated above, the act exempts only flavorings from required label declaration. It does not exempt flavor enhancers. Therefore, because a protein hydrolysate that is used in a food as a flavoring is also being used as a flavor enhancer, it does not fall under the act's exemption from label declaration. For this reason, FDA tentatively concludes that all uses of protein hydrolysates are subject to the act's provisions requiring ingredient declaration, and any protein hydrolysate used in food must be declared in the ingredient list by its common or usual name.

The agency's tentative determination that protein hydrolysates are not exempt from required label declaration responds in part to the Council's request for an advisory opinion on the propriety of listing hydrolyzed vegetable protein as "flavor" or "natural flavor" in the ingredient list when it is used as a flavoring ingredient in foods. FDA's tentative view is that such a listing would misbrand the food.

FDA has considered the Council's contention that the inclusion of "protein hydrolysates" in the definition of "natural flavor" in § 101.22(a)(3) indicates that the agency, in establishing this regulation, intended that hydrolyzed vegetable protein could be listed simply as "natural flavor." The agency does not agree. While FDA acknowledges that the Council's contention represents one interpretation of § 101.22, it is also true that a major function of § 101.22 is to distinguish between artificial flavors and natural flavors for purposes of 21 U.S.C. 343(k). As such, inclusion of the term "protein hydrolysate" in § 101.22(a)(3) establishes that a protein hydrolysate can be considered to be a "natural flavor" when it functions as a flavor in foods. Thus, a product flavored with a protein hydrolysate can bear the statement "contains no artificial flavors." However, nothing in § 101.22(a)(3) would preclude the agency from determining, as it is proposing to do, that a protein hydrolysate should also be specifically declared in the ingredient list because it has other functions in the food in addition to flavoring.

The agency emphasizes that the conclusion that it has tentatively reached for protein hydrolysates is specific to this class of flavoring ingredients. The vast majority of flavoring ingredients used in foods are flavorings only, and the agency has no reason to question their eligibility for exemption from label declaration under the provisions of the act.

Because many uses of protein hydrolysates in foods have long been regarded by industry as flavoring uses, and thus considered to be exempt from required label declaration, and because protein hydrolysates will continue to be listed in the regulation which defines "natural flavors," the agency believes that a new provision in the regulations is necessary to make clear exactly what the labeling requirements are for protein hydrolysates. FDA therefore is proposing to add a new paragraph (h)(7) to § 101.22. If adopted, this new paragraph will require that any protein hydrolysate used for flavor-related purposes in food be specifically declared in the ingredient list because these ingredients function in foods not only as flavors but as flavor enhancers.

e. *Terminology for declaration of protein hydrolysates.* Section 102.5(a) sets forth the general principles for common or usual names for nonstandardized foods. This regulation states that the common or usual name of a food shall describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients. Furthermore, this regulation states that each class or subclass of food shall be given its own common or usual name that states what it is in a way that distinguishes it from different foods.

In instances where manufacturers have declared protein hydrolysates in an ingredient list, they have frequently used general terms such as "hydrolyzed vegetable protein" and "hydrolyzed protein," which appear in 21 CFR 101.35 and in the previously cited standards of identity to describe this entire class of substances. FDA believes that such general terms do not adequately describe the nature of protein hydrolysates, and that they do not distinguish between the different types of ingredients within this general class of ingredients. For example, hydrolyzed wheat gluten and hydrolyzed soy protein are different ingredients which have completely different amino acid profiles, and therefore these two ingredients should not be declared by a general name. Furthermore, such basic differences in amino acid composition exist among all protein hydrolysates (Ref. 22). Therefore, FDA finds that such general terms as "hydrolyzed protein" and "hydrolyzed vegetable protein" do not fulfill the requirements for common and usual names set forth in § 102.5(a).

Because the source of a protein hydrolysate has a significant effect on its compositional and functional properties, inclusion of the source in the name of a protein hydrolysate is essential to adequately describe the nature of the ingredient. Therefore, in accordance with the requirements of

§ 102.5(a), the common or usual name used to declare a protein hydrolysate must identify the food source from which the ingredient was prepared.

Moreover, comments on the 1989 ANPRM revealed that consumers are interested in being able to identify the food source of a protein hydrolysate for two reasons. First, for religious or cultural reasons, some consumers wish to avoid foods or food ingredients that are of animal origin because their dietary convictions prohibit or discourage the consumption of such foods. If, for example, hydrolyzed casein, a protein hydrolysate derived from the milk protein casein, were used as an ingredient in a food, the name used to declare this ingredient would have to convey the animal origin of the protein source to adequately inform such an individual of the nonacceptability of the food in his/her diet. The term "protein hydrolysate" would not convey this information. The term "hydrolyzed casein," however, would convey the animal origin of the ingredient.

The agency tentatively finds that the food source of a protein hydrolysate is information of material importance for a person who desires to avoid certain foods for religious or cultural reasons. This information is necessary for such an individual to determine whether the food is acceptable or nonacceptable for inclusion in their diet. If such information is not included in the declaration of a protein hydrolysate, a consumer would have no way of knowing that he/she was consuming a food prohibited or discouraged by his/her personal convictions. The agency thus tentatively concludes that the food source of a protein hydrolysate is a material fact under 21 U.S.C. 321(n), and that the failure to identify the food source in the declaration of a protein hydrolysate would cause the food to be misbranded.

The second reason consumers are interested in being able to identify the source of a protein hydrolysate is that an individual may be allergic to the source food of a protein hydrolysate (e.g., corn, wheat, milk) and would desire to avoid foods containing ingredients derived from such foods. Concerning the possibility of food specific allergic reactions to protein hydrolysates, the agency believes that such reactions are unlikely to occur because the high degree of hydrolysis (i.e., chemical breakdown of the protein) generally employed in the manufacture of these ingredients is likely to destroy the allergenic potential of the starting protein (Ref. 18). For this reason, the agency tentatively concludes that source declaration for protein hydrolysates is not necessary for the protection of individuals who are allergic to the source foods of these ingredients.

Because of the industry's past use of names that do not convey the specific identity or the food source of protein hydrolysates, and in order to clarify how these substances would be required to be declared, the agency is proposing to include in new § 101.22(h)(7), a requirement that the common or usual name used to declare the ingredient be specific to the ingredient, and that it identify the food source from which the protein hydrolysate was derived. Examples in the proposed regulation illustrate both acceptable and unacceptable names for the declaration of a protein hydrolysate derived from a specific milk protein, casein. The term "hydrolyzed milk protein" would not be acceptable because protein hydrolysates may be prepared from milk proteins other than casein, and thus the name is not specific to the ingredient. An appropriate name would be "hydrolyzed casein." The proposed regulation also cites examples of other names that the agency considers appropriate for the declaration of protein hydrolysates, such as "hydrolyzed soy protein" and "hydrolyzed wheat gluten." To emphasize that some names previously used for protein hydrolysates are not in accord with the proposed requirements, the proposed regulation also states that "hydrolyzed vegetable protein" and "hydrolyzed protein" are not acceptable names because they do not identify the food source of the protein.

In addition, the agency advises that the rationale for proposed § 101.22(h)(7) would apply in determining appropriate common or usual names for the declaration of protein hydrolysates used for non-flavor-related purposes (e.g., one used as a protein supplement). Accordingly, such protein hydrolysates should be labeled in accordance with the provisions of the proposed regulation to ensure compliance with the requirements of the act.

The agency agrees with the Council that § 101.35 is obsolete in that it does not include many of the protein hydrolysates now used in foods. The agency also believes the terminology for the declaration of protein hydrolysates prescribed in this regulation is not appropriate based upon its review of this issue and is inconsistent with proposed § 101.22(h)(7). For these reasons, the agency is also proposing to delete § 101.35 from the regulations.

5. Declaration of Glutamate in Protein Hydrolysates

a. *Potential for adverse reactions to glutamates.* The agency has considered the comments cited above that relate to the glutamate (and monosodium glutamate) component of protein hydrolysates. Some of these comments argued that monosodium glutamate should be declared on the label of foods containing protein hydrolysates because of the possibility of adverse reactions to the monosodium glutamate component of these foods.

Because monosodium glutamate, as it occurs in protein hydrolysates, is a component of these ingredients, and is not itself an ingredient, it is not subject to the ingredient declaration requirements of the act. For the agency to require that monosodium glutamate be declared as a component of protein hydrolysates, it would have to conclude either (1) that such declaration is necessary to provide for the safe use of the ingredient (i.e., protein hydrolysates), according to section 409(c)(1)(A) of the act, or (2) that such declaration constitutes a material fact, under section 201(n) of the act, with respect to the consequences that may result from the use of the food containing the protein hydrolysate. Therefore, in considering this matter, the agency reviewed the available information from case reports (Ref. 20), from the scientific literature that relates monosodium glutamate to adverse reactions (Ref. 19), and, in particular, to a symptom complex that has gained public recognition as "Chinese Restaurant Syndrome," to determine whether this information provides a basis for requiring the label declaration of monosodium glutamate when it is present in a food as a result of being a component of an ingredient.

The agency's review revealed that in spite of a large amount of information regarding hypersensitivity reactions to monosodium glutamate, the extent of the problem remains unknown because of a lack of reliable information regarding the prevalence or incidence of reactions in the general population (Ref. 37). Most of the adverse reaction reports that the agency has obtained consist of anecdotal information that a person had a reaction after eating a certain food (Ref. 20). Although such information may be of value in providing direction for further studies, it does not provide the basis for any definitive determinations about the effects of monosodium glutamate (Ref. 21). While the agency believes that there is some evidence in case reports and in the

scientific literature that dose dependent, mild reactions to monosodium glutamate occur in a small portion of the population (Refs. 37, 38), FDA is not aware of any scientific evidence that establishes that monosodium glutamate causes particularly severe adverse reactions, or that reactions to low doses of monosodium glutamate occur and are life-threatening (Refs. 19 through 21).

b. *Tentative decision not to require declaration of monosodium glutamate in protein hydrolysates.* After carefully considering the information discussed above, the agency has tentatively concluded that it does not provide an appropriate basis to find that label declaration of monosodium glutamate as a component of protein hydrolysates is necessary to assure the safe use of protein hydrolysates, and that it does not provide an appropriate basis to conclude that the declaration of monosodium glutamate constitutes a material fact under section 201(n) of the act. Therefore, the agency is not proposing to require the declaration of monosodium glutamate as a component of protein hydrolysates.

The agency is evaluating the safety of both monosodium glutamate and protein hydrolysates as part of its comprehensive review of the safety of human food ingredients classified as GRAS. The agency will consider all safety-related issues pertaining to these ingredients in conjunction with these evaluations. Moreover, because of the comments that it received at the food labeling hearings, the agency has expanded its efforts to track and investigate reports of adverse reactions involving both monosodium glutamate and protein hydrolysates and is prepared to take any necessary action to protect the public health should scientific evidence become available to warrant such action.

IV. Use of "and/or" Labeling

A. Background

1. General

"And/or" (i.e., disjunctive) labeling permits a manufacturer to list together in the ingredient list of a food product all the ingredients of a particular type (e.g., fats or oils) that it sometimes uses to make the product, without having to specify the ingredients that are actually present in the product. To make clear that not all of the ingredients identified are actually present, the entry in the ingredient list must include the words "or," "and/or," or "contains one or more of the following." For example, the ingredient list on a package of crackers may include an entry "partially hydrogenated vegetable shortening (soybean oil, canola oil, and/or palm oil)."

"And/or" labeling is intended to provide manufacturers with flexibility to choose among similar food ingredients without having to revise their labels each time their choice changes. Current regulations allow for the use of "and/or" labeling for fats and oils (§ 101.4(b)(14)), leavening agents (§ 101.4(b)(16)), yeast nutrients (§ 101.4(b)(17)), dough conditioners (§ 101.4(b)(18)), and firming agents (§ 101.4(b)(19)) when manufacturers are unable to adhere to a consistent pattern of use of these ingredients in their products. Of these uses of "and/or" labeling, the comments make clear that its use for fats and oils generates the most controversy.

2. Regulatory History of "and/or" Labeling

Historically, FDA permitted fat and oil ingredients to be declared in the ingredient list by the generic terms "vegetable oil," "animal fat," and "marine oil," or as "shortening," without naming the specific fat, oil, or type of shortening. In 1971 (36 FR 11521, June 15, 1971), however, FDA proposed to require the declaration of fat and oil ingredients by specific common or usual names instead of by generic names (e.g., "corn oil" instead of "vegetable oil" or "shortening"). FDA issued this proposal in response to requests from consumers and consumer organizations, as well as from health professionals.

The 1971 proposal to specify the source of the oil was opposed by a number of food manufacturers. Their opposition was mainly based on two contentions: (1) That manufacturing techniques alter fats and oils so that the ingredients in finished form do not differ greatly regardless of source; and (2) that requiring more specific ingredient listings would increase food costs because manufacturers would have to reprint labels whenever fat and oil ingredients were changed in response to fluctuations in price or supply.

After considering the comments, FDA issued its current regulation, § 101.4(b)(14) (41 FR 1165, January 6, 1976), which requires that fat and oil ingredients be declared by their specific common or usual names. This regulation also provides, however, that when the fats and oils are not the predominant ingredient in a food (i.e., do not make up the greatest proportion of the food on a weight basis), a manufacturer can declare the fats and oils in the list of ingredients by use of a collective term, followed by a parenthetical listing of the common or usual name of each fat and oil ingredient that might be used. For example, as stated above, a label might bear the statement "vegetable oil (may contain soybean, cottonseed, and/or corn oil)." The flexibility provided by this regulation permits manufacturers to use any one of the three oils listed in the parentheses, or a combination of them, depending on marketplace factors such as availability and price, without changing the label. Consequently, manufacturers can keep ingredient and labeling costs as low as possible and pass these cost savings on to the consumer. Where fats or oils are the predominant ingredient (as in cooking oils or shortenings), manufacturers are required to declare the specific fat or oil ingredients present in the product in descending order of predominance.

The January 6, 1976 (41 FR 1156), final rule also amended § 101.4 concerning the manner in which ingredients are to be declared on food labels. The new regulation specifically required that all ingredients be listed by their common or usual name and not by a collective (generic) name. It also rescinded the existing policy on declaration of leavening agents, yeast nutrients, and dough conditioners in bakery products (Trade Correspondence Number 94 (TC 94)). TC 94 had permitted use of the general terms "leavening [agent]," "yeast nutrient," and "dough conditioner" to declare these types of ingredients in bakery products.

In response to these changes, several industry petitions were filed that requested flexibility in the labeling of these ingredients. On June 6, 1978, FDA published a regulation (43 FR 24518) that authorized the use of "and/or" labeling for leavening agents, yeast nutrients, and dough conditioners.

In addition, amendments to the standards of identity for canned vegetables and canned tomato products, and the revised ingredient labeling regulations (see 41 FR 1156), raised a similar labeling problem for firming agents. Before the agency adopted these amendments, the standards permitted the use of five or more different calcium salts for the purpose of assuring the firmness of canned products after processing. The use of these ingredients was declared as "trace of calcium salt added," thus permitting the manufacturers to choose among the various salts as necessary. The revised standards of identity and the January 6, 1976, ingredient labeling regulation required that each optional ingredient, including the various calcium salts, be declared by its common or usual name.

As a result, the agency received a petition to allow the same labeling flexibility for firming agents in canned vegetable and canned tomato products

that it had permitted for leavening agents, yeast nutrients, and dough conditioners. On February 25, 1983 (48 FR 8053), the agency published a final rule permitting the use of "and/or" labeling for firming agents.

B. Comments and Agency Response

1. Nutrition Concerns

Many of the comments responding to FDA's 1989 ANPRM addressed "and/or" labeling. A majority of those comments objected to "and/or" labeling of fats and oils and expressed a desire to have the specific fats and oils present in a food identified. The primary reason given for wanting to know the specific fats and oils present was the desire to select a diet low in saturated fatty acids consistent with medical advice or with current dietary recommendations (Refs. 22 through 26). Comments argued that when the fats and oils present in a particular food are not specifically identified in the ingredient list, consumers have little basis on which to assess the saturated fatty acid content of the product and therefore find it impossible to follow medical advice or dietary recommendations.

In the July 19, 1990 proposal (55 FR 29495), entitled "Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision," FDA recognized the importance of the level of saturated fatty acids in the diet. In recognition of the recommendations to limit saturated fatty acid intake (Refs. 23, 25, and 26), FDA proposed to require that, in addition to the current requirement that total fat be declared, the amount of saturated fatty acids present in a serving of food be a mandatory component of nutrition labeling. The 1990 amendments also include requirements for listing total fat and saturated fat on all foods (sec. 2—sec. 403(q)(1)(D)).

Thus, it is very likely that the nutrition labeling regulations that FDA will ultimately adopt as part of the DHHS initiative and in response to the 1990 amendments will ensure that consumers are provided with the information that they need to regulate their daily dietary intake of saturated fatty acids. The quantitative declaration of saturated fatty acid content in the nutrition label will better inform consumers about the level of saturated fatty acids present in a food than a listing of specific fat or oil sources in descending order of predominance in the ingredient list.

For consumers, nutrition labeling is the most readily available information about the nutritional value of foods and enables them to compare nutritional properties of different products. Therefore, FDA believes that the primary need expressed in the comments that opposed "and/or" labeling of fats and oils, the need for information on the saturated fatty acid content of the product, is best satisfied by the proposed revisions to nutrition labeling. Accordingly, the agency tentatively finds that it is not necessary to eliminate "and/or" labeling for fats and oils to meet this need.

The agency's view is supported by comments that suggested that disclosure of fat and fatty acid content would provide consumers with the information necessary to make wise dietary choices. As stated by a representative of the American Dietetic Association at the public hearing in San Antonio on November 1, 1989, "With strong nutrition information labeling regulations, 'and/or' labeling could continue, as mixtures of fats and oils allow food manufacturers the flexibility to respond to fluctuations in price and availability."

A few comments stated that the substitution of fats and oils within the "and/or" list would substantially affect the saturated versus unsaturated fatty acid profile of the finished product. However, data were not included with these comments to support this position. Because fats and oils have a specific technological effect in food product formulations, they are often altered by processing techniques, so that those used interchangeably in the finished product are not significantly different with respect to melting point and flow characteristics, regardless of their sources (Ref. 26a). Such alterations affect the level of saturated fatty acids in the source oils, diminishing any differences that may have existed among them before processing. This fact was reflected in a comment from industry that stated that 'and/or' labeling is compatible with fatty acid labeling, when saturates and total unsaturates are declared, since many of these vegetable oils have very similar fatty acid compositions."

A number of written and oral comments suggested allowing "and/or" labeling only when the fats or oils used in a product are nutritionally alike.

FDA does not believe that such a limit on the use of "and/or" labeling would significantly limit the use of this type of labeling. As discussed above, when oils from several sources are listed as having been used interchangeably, they are either inherently similar or have been altered by hydrogenation or other processes to have similar physical and chemical properties, such as melting point and consistency. Therefore, although the source oils may not have been nutritionally alike, they are likely to be similar at the time they are incorporated into the food product.

Moreover, the agency believes that the proposed requirement for saturated fatty acid declaration in nutrition labeling will provide an incentive to maintain nutritional consistency of source fats and oils. FDA has proposed to limit the amount that the saturated fatty acid content of a food can exceed the value that is declared on its label to not more than 20 percent (see proposed § 101.9(e)(5) in the **Federal Register** of July 19, 1990 (55 FR 29516)). This proposed limitation will mean that the quantitative declaration of saturated fatty acids within nutrition labeling will need to be high enough to cover the use of the fat or oil with the highest saturated fatty acid content. Because manufacturers would not be expected to want to declare higher saturated fatty acid values than necessary, FDA expects that the food industry will use fats and oils with similar saturated fatty acid levels.

Comments indicate an apparent belief among consumers that manufacturers sometimes include dissimilar oils within the "and/or" statement (e.g., "contains one or more of the following vegetable oils: Corn, soy, and/or coconut") with no intention of using the oils lowest in saturated fatty acids but simply to raise the possibility in the purchaser's mind that the product is lower in saturated fatty acids than it actually is. However, to avoid misbranding a product under proposed § 101.9(e)(5), a manufacturer would need to declare in nutrition labeling the amount of saturated fatty acids present when the oil (or blend of oils) containing the greatest amount of saturated fatty acids is used. FDA expects that this requirement will provide an incentive for the food industry to use oils or blends with the lowest saturated fatty acid content possible and will result in accurate information about the actual selection of oils that may have been used in the food.

Other comments suggested allowing "and/or" labeling if the total fat in a food falls below a specific level. The levels mentioned in the comments range from less than 5 to 10 percent by weight and from less than 3 to 5 grams per serving.

This suggestion is similar to the agency's 1979 tentative position. At that time, FDA and USDA stated their intentions to amend their ingredient labeling regulations to require that foods containing 10 percent or more total fat on a dry weight basis declare the specific source of the fat or oil

ingredients used in the food. This cutoff was based on 21 CFR 101.25(c)(1), which provides that a food containing 10 percent or more fat on a dry weight basis and at least 2 grams of fat per serving may bear labeling declaring the amount of fatty acids present because it is a significant source of fat in the diet. (FDA has proposed to delete this threshold provision (55 FR 29487, July 19, 1990) because it proposes to require that saturated fatty acids be included in all nutrition labeling.)

The agency believes that the levels suggested are unduly restrictive and are unnecessary in light of the proposed nutrition labeling revisions that will require declaration of the amount of saturated fatty acid. It should be noted that current regulations restrict "and/or" labeling to situations where fats and oils are not the predominant ingredient (§ 101.4(b)(14)). The agency is not proposing to change this restriction.

2. Allergy Concerns

Comments also cite an additional problem created by "and/or" labeling: An individual allergic to any of the ingredients listed in the "and/or" declaration would need to avoid the finished food. The comments argued that if the ingredient actually used were identified, the individual might be able to consume the product. Several comments on the 1989 ANPRM pointed to this problem, with particular emphasis on allergic reactions to vegetable oils.

Allergic reactions to oils would be caused by specific proteins in the oil rather than by its fatty acids which are likely to be present in different amounts in all oils. Proteinaceous materials are removed from oils during extraction and refining, leaving a relatively pure isolate (Ref. 27). However, FDA acknowledges the possibility that traces of protein related to the plant source, e.g., soy protein in soybean oil, might occasionally be found in some oils which could trigger an allergic reaction.

Other than anecdotal information, however, the agency has not been able to find any reported cases of food allergies to the oils commonly available for commercial use. In fact, one double blind crossover trial showed that peanut oil is not allergenic to persons allergic to peanuts, and that it was therefore unnecessary to eliminate or restrict the use of peanut oil by peanut-sensitive individuals (Ref. 28). The authors of this study stated that "changes in the food labeling regulations that "require source labeling of fats and oils, if based solely on the risk of allergic reactions to certain oils, may not be warranted." The American Academy of Allergy and Immunology's Committee on Adverse Reactions to Foods concluded that oils are probably infrequently responsible for significant allergic reactions, and that, accordingly, "avoidance of these oils and foods containing them is probably not necessary" (Ref. 29, p. 163).

In addition, FDA has not received any reports of adverse reactions by infants to vegetable oils, such as corn and soybean oils, used in commercially available infant formulas. This fact leads FDA to tentatively conclude that these oils are well absorbed by this sensitive population, that traces of protein in such oils are insufficient to cause allergic reactions, and, therefore, that the oils used create no problem with allergenicity. This tentative conclusion is supported by the findings of the Surgeon General's Report on Nutrition and Health (Ref. 22), which reviewed the subject of food allergies and did not report any adverse reactions that were related to vegetable oils.

Accordingly, FDA tentatively finds that, in the absence of scientific data showing that vegetable oils will trigger allergic reactions, there is no basis to eliminate "and/or" labeling for fats and oils. The agency encourages anyone with scientific data that shows that fat or oils can cause such reactions to submit that data in a comment on this proposal.

In summary, in light of the proposed revisions in nutrition labeling regulations and the 1990 amendments, which mandate declaration of the saturated fatty acid content of a food, the agency does not believe that the potential benefits from requiring more specific labeling of fats and oils will outweigh the adverse impact of the higher costs of food to all consumers that may accrue from restricting manufacturers' ability to respond to marketplace factors without having to change food labels. Accordingly, FDA is not proposing to revise § 101.4(b)(14) at this time.

Likewise, the agency does not find any basis to propose to revise other paragraphs in § 101.4(b) that permit "and/or" labeling of other food categories. FDA is not aware of any significant health problems that are associated with any of the ingredients that are subject to these provisions, nor is it aware of any reason why consumers would wish to avoid any of these ingredients. In adopting these provisions, FDA concluded that the flexibility that they provide to manufacturers is significant, and that consumers would not be deprived of necessary information by them. FDA has not been provided with any basis to reconsider these conclusions.

V. Source Labeling

A. For All Foods

Many consumers responding to the 1989 ANPRM requested that the specific source-food from which an ingredient is made appear in the list of ingredients along with the ingredient name. For example, some of these comments requested that the term "sodium caseinate" appear in an ingredient list as a term such as "sodium caseinate (from milk)." Some consumer comments pointed out that individuals with corn allergies frequently encounter sweeteners in ingredient lists that are derived from corn but that are not readily identifiable as such. Most of these comments expressed a desire to avoid certain ingredients because of special diets, allergies, or religious reasons.

FDA appreciates consumer needs and concerns about source labeling. In many situations, the agency already provides for source information as a part of the ingredient name because often such information is essential to adequately describe the basic nature of the food ingredient. For example, gluten, the principal protein component of corn endosperm and of wheat, must be identified in ingredient lists as "corn gluten" (21 CFR 184.1321) or "wheat gluten" (21 CFR 184.1322), as appropriate. Also, a fruit juice ingredient in a food must be identified in the ingredient list with the name of the specific fruit source from which the juice is made (21 CFR 101.4(a)(1) and 102.5(a)).

In these situations, FDA considers source information to be part of the ingredient's common or usual name that is required under the provisions of section 403(i) of the act. The agency requires that such names accurately identify or describe, in as simple and direct terms as possible, the basic nature of the ingredient or its characterizing properties. This requirement is set forth in § 102.5(a), which establishes principles for devising common or usual names for foods.

However, there are situations in which source information is not part of the common or usual name of food ingredients. In most instances, these are ingredients that have a long history of use. For FDA to provide for declaration of the source of these ingredients, it would have to amend the common or usual names of all foods to include their source. However, for the agency to adopt such a requirement would require enormous resources, and the agency simply does not have such resources available. Moreover, many of these

ingredients are so well known that most consumers understand the source of the ingredient from its name (e.g., raisins from grapes, sugar from sugar cane or sugar beets, whey from milk). Accordingly, FDA is not moving to provide source information in the common or usual names of all foods.

B. For Specific Foods

In specific situations, however, where source information has a material bearing on the purchase of a food, or where consumers may be misled without such information, FDA may take steps to require this information. For example, where the source is important to the value of a food, or where consumers may be faced with significant adverse health consequences without this information, the agency will initiate rulemaking procedures to require that source be included in the ingredient name.

1. Mandatory Labeling Requirements

At this time, FDA is aware of only two situations in which source labeling is not being provided, but the agency has tentatively determined that it should be. The first is the declaration of protein hydrolysates, which the agency has discussed above. Second, some products that are marketed as dairy product substitutes bear labeling that includes the statement "nondairy" and yet contain a caseinate milk derivative. For example, some substitutes for dairy cream contain caseinates as ingredients but are labeled as "nondairy" coffee whiteners. (A number of State regulatory agencies require the "nondairy" legend to appear on these foods.) In such situations, consumers may be led to believe that the caseinates are not milk derived. However, for consumers with allergies to milk proteins, such a belief may lead to life-threatening consequences (Refs. 29, 30, 31).

The agency has informally advised producers of these products that, following the listing of the common or usual name of the specific caseinate, the ingredient statement should include a term that identifies the source of the caseinate, such as "(a milk derivative)," so that the label will not be misleading. FDA has tentatively decided to codify this advice under authority of sections 201(n), 403(a)(1), and 701(a) of the act (21 U.S.C. 321(n), 343(a)(1), and 371(a)).

Accordingly, the proposed rule, in § 101.4(d), provides that wherever "nondairy" statements appear on the label of a product that contains a milk derivative, the source of the milk derivative must be declared. This proposed requirement is consistent with source labeling requirements for hypoallergenic foods that FDA has already established in 21 CFR 105.62. The agency solicits comments concerning whether the proposed requirement will adequately protect consumers with allergies to milk protein, or whether additional labeling requirements (e.g., where the term "nondairy" appears, that term would also be qualified by a term such as "contains a milk derivative") are also necessary. However, where a "nondairy" statement is not present, FDA is not proposing a source labeling requirement because in this instance there is no basis to conclude that the specific name of the caseinate without source information is misleading.

2. Voluntary Labeling Provisions

a. *Background.* Comments requesting source labeling for corn sweeteners bear on four standards of identity in 21 CFR part 168—Sweeteners and Table Sirups: § 168.110 *Dextrose anhydrous*; § 168.111 *Dextrose monohydrate*; § 168.120 *Glucose sirup*; and § 168.121 *Dried glucose sirup.* As is the case with any food subject to a standard of identity, these sweeteners may be identified in an ingredient list on the label of a formulated food product only by a name specified in the standard. Thus, each of the standards lists the permitted names for these sweeteners.

The standards for glucose sirup and dried glucose sirup permit the optional inclusion of the type of starch from which the sirup was produced in the name of the sweetener, e.g., "corn sirup," "tapioca sirup," "corn sirup solids," or "tapioca sirup solids." Therefore, food processors may include the food source when declaring these syrups in an ingredient list.

However, the standards for dextrose anhydrous and dextrose monohydrate do not provide for the inclusion of the food source, which is almost exclusively corn, in the permitted names of these sweeteners. Therefore, a food processor is precluded from stating the source of these ingredients in the ingredient list.

b. *Factors considered in response to comments.* In response to the comments concerning the labeling of corn-derived sweeteners, FDA has considered whether it should propose to permit the voluntary inclusion of the term "corn" (or other food source) in the permitted names of dextrose anhydrous and dextrose monohydrate, or whether it should propose to adopt common or usual names for these ingredients, as well as glucose sirup and dried glucose sirup sweeteners, that mandate inclusion of the food source.

The agency has decided not to propose to require inclusion of the food source in the names of these sweeteners. The permitted names for these foods have been used for many years, and FDA believes that most consumers are aware that these foods may have been derived from corn. In view of the long history of use of these names, the agency believes that it would have to find that the established names do not adequately describe the ingredient before proposing to require mandatory inclusion of the food source in these names.

One concern that has been expressed, however, is that corn sensitive consumers are put at risk by the current regulations. FDA discussed the concern about allergies in its proposal to affirm the generally recognized as safe (GRAS) status of corn sugar and corn syrup which was published in the **Federal Register** of November 30, 1982 (47 FR 53917 at 53918). A final rule affirming the GRAS status of these and other sweeteners was published in the **Federal Register** of November 7, 1988 (53 FR 44862). In the 1982 proposal, the agency pointed out that there are conflicting reports on the allergenicity of these sweeteners. For example, ingestion of corn sugar and corn syrup (Ref. 32) and intravenous injections of corn sugar (Ref. 33) were reported to result in the production of allergic symptoms in some individuals highly sensitive to corn. "Blindfold" ingestion studies involving 25 patients with histories suggestive of corn allergy, however, resulted in a few cases of reaction to large feedings of the starches of corn, tapioca, and arrowroot but no case of susceptibility to corn syrup or corn sugar (Ref. 34). Another study also failed to demonstrate sensitivity to corn syrup in an ingestion test of an individual sensitive to corn meal and corn starch (Ref. 35).

Further, the agency advised in the 1986 "Report From FDA's Sugars Task Force" that there was no evidence in the literature at that time that allergic reactions to corn-derived sweeteners pose a major health concern in the United States, although there have been isolated case reports suggesting that the corn-derived sweeteners may contribute to food-induced allergic reactions in some patients (Ref. 36).

The agency is not aware of any other concerns that would justify changing the names of these sweeteners.

c. *Tentative conclusions and proposal to permit voluntary source declaration.* In the absence of more conclusive evidence of a hazard to consumers from these standardized sweeteners or of any other basis for changing the names

provided for in the standards of identity, FDA is not prepared to propose source labeling requirements for these sweeteners. Consumers can avoid these sweeteners by familiarizing themselves with the names of these sweeteners and by looking for these names in lists of ingredients.

Although the agency is not proposing to require source labeling for the standardized sweeteners, FDA has tentatively concluded that firms should be permitted to identify corn (or other foods) as the source of dextrose anhydrous and dextrose monohydrate. The fact that the existing standards for these two sugars do not provide this option seems inappropriate in light of the concerns expressed by consumers about source labeling for corn sweeteners. The agency is therefore proposing to amend §§ 168.110(b) and 168.111(c) to provide for the optional declaration of the food source in the naming of dextrose anhydrous and dextrose monohydrate.

For corn sugar, the proposed amendments to the standards effectively provide for the voluntary use of the names "corn sugar anhydrous," "anhydrous corn sugar," "corn sugar monohydrate," and "corn sugar," as alternatives to those names already permitted. Other sources for these two sugars, such as grapes, could also be declared under the amended standard. However, corn is by far the principal source of dextrose used in foods.

d. *Guidance on sweetener nomenclature.* FDA has received inquiries from industry as to whether the terms "corn sugar," "dextrose," "glucose," "glucose syrup," and "corn syrup" are appropriate for inclusion in ingredient lists.

FDA advises that the current standards of identity for sweeteners do not permit the unqualified use of the term "glucose" or the use of the term "corn sugar" as the names of sweeteners. Thus, these terms should not be used in ingredient lists. The standards of identity in §§ 168.110, 168.111, 168.120, and 168.121 permit the use of several different names for sweeteners in ingredient lists, and the agency has no objection to the use of any of these names. However, in view of the significant consumer interest in source labeling, the agency suggests that source labeling be used where the standards provide for it. For example, FDA considers terms such as "corn syrup," "wheat syrup," "dried corn syrup," and "dried wheat syrup" to be preferable to the terms "glucose syrup" and "dried glucose syrup". For further guidance on appropriate names for other sweeteners, FDA refers interested parties to regulations pertaining to these substances found in 21 CFR parts 168, 172, 180, 182, and 184.

VI. Other Sweetener Labeling Issues

A. Background

1. FDA's 1974 Proposal on Sweetener Labeling

In the **Federal Register** of June 14, 1974 (39 FR 20883), FDA issued a proposal concerning, in part, the label designation of ingredients. Among the ingredients covered by this document were several sweeteners. The agency proposed to revise § 101.4 (formerly 21 CFR 1.10) to: (1) Require that sucrose be declared as "sugar" and to permit the declaration of invert sugar as "sugar;" and (2) permit the declaration of sweeteners derived from corn as "corn sweeteners." The proposal would not have required a listing of the individual common or usual names to follow these collective names.

In the **Federal Register** of January 6, 1976 (41 FR 1156), the agency acted on parts of this proposal but deferred action on the proposed collective ingredient designations for corn sweeteners and sugar, pending its review of the safety of certain of the commonly used sweeteners: Corn sugar, corn syrup, invert sugar, and sucrose. In the **Federal Register** of November 7, 1988 (53 FR 44862), the agency issued a ruling affirming that the use of these sweeteners as direct human food ingredients is GRAS. With the completion of its evaluation of the health aspects of these sweeteners, FDA is in a position to act on the proposed collective designations for corn sweeteners and sugar.

2. Response to the 1974 Proposal

For the most part, consumer and industry responses to the 1974 proposal were markedly different. Consumers expressed a desire for complete declaration of all ingredients and specifically opposed the proposed collective terms for sweeteners. Consumers wanted to know the specific names for all ingredients in their food in order to be able to avoid certain ingredients and to identify the presence of specific ingredients for health reasons.

Industry responded primarily by endorsing the establishment of collective terms for sweeteners because of the savings in labeling costs that would result if such terms could be used as substitutes for specific sweetener names. This response was expressed both in petitions attempting to justify the need for collective terms and in letters supporting the positions raised in the petitions. Supporting petitions were submitted by the Canada Dry Corp. (June 27, 1975—Docket No. 75P–0144), the Canners League of California (January 19, 1977—Docket No. 77P–0051), the Independent Bakers Association (September 22, 1977—Docket No. 77P–0357), the California Milling Corp. (June 19, 1978—Docket No. 77P–0051 CP0002), the Orth Co. (July 31, 1978—Docket No. 77P–0357), L. Karp & Sons, Inc. (August 11, 1978—Docket No. 77P–0357 CP0003), and the National Soft Drink Association (January 20, 1984—Docket No. 84P–0029). However, The Sugar Association, Inc., submitted a petition (February 8, 1984—Docket No. 84P–0047) expressing opposition to the establishment of these collective terms.

Some of the petitions urged adoption of the collective terms as proposed, but other petitions requested that collective terms encompass a broader group of sweeteners. These petitions asserted that the collective term "sugar" should include the sugars sucrose, glucose, and fructose (including starch-derived high-fructose sugars such as high-fructose corn syrup (HFCS)). A petition pointed out that HFCS contains approximately the same glucose-to-fructose ratio as honey, invert sugar, and sucrose. The petition maintained that the term "sugar" is appropriate for listing these sweeteners in soft drinks because of the similarity of all of these sweeteners after incorporation in these foods. The petition stated that in soft drinks, sucrose is gradually hydrolyzed to a mixture of sucrose, glucose, and fructose. Further, the petition stated that invert sugar is, for practical purposes, indistinguishable from the HFCS used in soft drinks, and that the net result of the hydrolysis is a mixture of sucrose, glucose, and fructose.

A number of petitions requested establishment of alternative sweetener labeling with collective terms followed with specific sweetener names subject to "and/or" labeling exemptions (e.g., "sweeteners (high-fructose corn syrup and/or sugar)") if FDA did not adopt the terms proposed. One of the petitions acknowledged that such an approach for sweeteners is already in use throughout the food industry and especially within the soft drink industry. The petition asserted that the agency should permit this practice to continue because of the adverse economic impact that would result if firms are forced to change their labels.

The petitions argued that establishment of the proposed collective terms, or the alternative labeling with "and/or" labeling exemptions, would provide important flexibility to

producers, provide consumers with all the information that they are likely to need in making purchase decisions, and provide a means of avoiding "the burdensome costs and compliance nightmares associated with multiple labeling inventories." A few petitions asserted that collective terms would adequately inform consumers about the ingredients, and that more detailed nomenclature might only cause confusion. One of these petitions attempted to support this assertion by pointing out that if FDA required that every sweetener be declared by a specific term, these terms could be dispersed throughout the ingredient list in a manner that would mislead consumers about the aggregate sweetener content of the product.

The petition from the Sugar Association, Inc., opposed the establishment of collective terms for sweeteners, contending that FDA should initiate rulemaking to define "sugar" as sucrose that is derived from sugar cane or sugar beets. The petition included a variety of substantiating documents (e.g., copies of trade journal articles, other publications, and trade and government correspondence) to demonstrate that sucrose is the only sweetener that has traditionally been referred to as "sugar" by industry, consumers, and government regulatory agencies, including FDA. The petition stated that the narrower definition of sugar is necessary "due to the ever-increasing number of beverages that list sugar as part of their ingredient list when such beverages either fail to contain any sucrose whatsoever or contain a blend of sucrose with other sweeteners." The petition pointed out that corn sweeteners are almost always lower in price than sucrose, and that in the beverage industry, corn sweetener usage has dramatically increased, while sucrose usage has correspondingly decreased. The petition also included evidence that some beverage manufacturers are adjusting formulations to provide for corn sweeteners as the only sweeteners in their products. The petition argued that use of collective sweetener labeling in lieu of specific sweetener names would allow a processor to use the cheapest sweetener available without proper identification.

In addition, the Sugar Association's petition disagreed with the position that the use of the term "sugar" on a soft drink ingredient label is proper because the spectrum of sweeteners remaining in a soft drink after a period of time is approximately the same, irrespective of whether the sweetener actually used in the manufacture of the product was sugar or HFCS. The petition stated that "the ratio of glucose to fructose will be different in a sugar-based soft drink when compared with that in an HFCS-based soft drink. Further, a soft drink prepared from a blend of sugar and HFCS would also be detectably different in sweetener content at any time during the life of the beverage." Moreover, the petition submitted evidence that most soft drinks are sold and probably consumed long before all of the sugar in the sugarbased beverages would have been completely converted to glucose and fructose.

Opposition to use of the term "sugar" for other sweeteners was also voiced in an industry letter that pointed out that sugar may be heated with foods containing protein without reacting with the protein. The letter stated that invert sugar, however, can react with protein when heated and thereby decrease the nutritional value of the protein present in a food. Thus, a consumer would not know whether heating a food would affect its protein value if the ingredient list for the product only contained the proposed collective term "sugar."

3. Consumer Response to 1978 Food Label Review

Consumers reiterated their desire for specific ingredient information in response to the agency's request in 1978 for comments on several food labeling issues (43 FR 25296, June 9, 1978). FDA considered these comments as part of the review of the food label that it conducted with USDA and FTC.

In 1979, after reviewing these comments and conducting several hearings around the country, FDA issued a **Federal Register** notice with USDA and FTC in which it announced its agenda for modifying the food label (44 FR 76004, December 21, 1979). FDA announced its intention to propose to amend the nutrition labeling regulations (§ 101.9) to require declaration of the total sugars content in a food. However, the agency never acted on its announced intent.

4. The 1989 ANPRM

As stated above, in 1989, FDA again sought public comment on a wide range of food labeling issues. In response, consumers stated that they are concerned about the quantity of sugars that they are consuming, and that they want specific ingredient information on their foods. Further, many consumer comments requested information concerning the total quantity of all sweeteners in their foods. One comment from a consumer organization suggested that all sweeteners be grouped together in a parenthetical listing of the specific names of the actual sweeteners that are present. Another comment requested that whenever lactose is an ingredient in a food, the food's label bear the term "lactose" to alert lactose intolerant consumers of its presence.

B. Agency Response to Issues on Sweetener Labeling

1. Use of Alternatives to Specific Names

FDA finds that it would not be appropriate either to establish collective terms for use in declaring sweeteners in ingredient lists in lieu of the specific names for these ingredients or to permit the use of "and/or" labeling for sweeteners.

Under section 403(i) of the act, a food that is fabricated from two or more ingredients is misbranded unless the label bears the common or usual name of each such ingredient. However, the act also states that the agency is to provide for exemptions if compliance with this requirement is impracticable or results in deception or unfair competition. The agency finds that neither of these conditions is present with respect to the declaration of individual sweeteners.

As pointed out above, the industry petitions attempted to establish that current labeling requirements are impracticable by asserting that unnecessary labeling costs result from the lack of labeling flexibility with respect to the specific names of sweeteners. However, FDA finds that the petitions have not supported this claim.

Use of collective names in lieu of specific ingredient names and use of "and/or" labeling exemptions with specific ingredient names may, under certain circumstances, provide significant cost savings by allowing manufacturers to change the ingredient content of a food based upon the price of alternative ingredients without having to change the food's label. In the case of fats and oils, this flexibility is needed. The relative price differential between interchangeable fats and oils is small, as prices of these products tend to be similar (Ref. 37). However, the small price differential makes it more likely that relative prices of the individual fats and oils will fluctuate frequently because a small change in price may be sufficient to make one fat or oil more costly than another. A more costly oil in one month may be a less costly oil in another month (Ref. 37). A slight price differential is often sufficient to cause a manufacturer to choose different fats or oils or different amounts of the fat or oil

to maintain the lowest cost blend. Over time, use of the lowest cost blend may significantly reduce production costs, but without the labeling flexibility provided by "and/or" exemptions, these savings could be severely curtailed or eliminated.

The relative prices of sweeteners do not appear to fluctuate in such a way that manufacturers would switch between products to use the lowest cost sweetener or sweetener blend. Industry information indicates that the price differential between sugar and corn sweeteners has remained relatively constant (Ref. 38). The price of sugar, often referred to as the "umbrella price," has consistently remained higher than the price of other corn sweeteners, primarily because of price supports and the high cost of processing sugar (Ref. 38). Therefore, based on past price fluctuation, FDA finds that a need for flexibility does not exist.

There appears to be very little potential for the price differential between sugar and corn sweeteners to change significantly. For such a change to take place, there would have to be a significant shortage in the supply of corn sweeteners, and such a shortage appears to be unlikely. Most practical substitutions of HFCS for sucrose have already occurred (Ref. 38). Most of the current and projected future growth in the market for HFCS is the result of population growth and increased use of corn sweeteners in foreign countries (Ref. 38). Concerns that the demand for corn sweeteners will exceed capacity have not been borne out (Ref. 38). In addition, several of the wet corn millers have announced an increase in the capacity for production of HFCS (Ref. 38). When demand is high, millers switch from production of ethanol to production of HFCS, thus expanding capacity (Ref. 39). Further, in the first quarter of any year, production generally outpaces demand, and manufacturers may store HFCS to help meet the higher demand that occurs in the hot summer months (Ref. 38).

However, none of the industry petitions has demonstrated that sweeteners are subject to the same frequency of formulation adjustment that occurs with respect to fats and oils and to the other types of ingredients for which FDA has permitted exemptions from requirements for specific ingredient listing.

In summary, the petitioners have not shown, nor does the evidence establish, that it is impracticable, or that it would result in deception or unfair competition, to require declaration of specific sweeteners in the ingredient list. To the contrary, the evidence indicates that declaration of specific sweeteners is practicable and should continue to be required.

Assertions that sweetener names should be based upon their form in a food after fabrication rather than on the form in which they are added to make the particular food product are inconsistent with the act itself. Section 403 of the act requires the declaration of the ingredients from which the food is fabricated by their common or usual names. Even if different sweeteners were identical in all respects after fabrication, and FDA has not been persuaded that this is in fact the case, this fact would not constitute the type of showing that is necessary to justify an exemption from the ingredient labeling requirements under section 403(i) of the act.

Assertions that FDA should not require declaration of specific sweeteners in the ingredient list because of the one-time costs that would be incurred if firms are forced to change violative labels also do not support the relief sought under the act. As stated previously, section 403(i) of the act requires, for establishment of exemptions, a showing that ingredient listing requirements would be impracticable or would result in deception or unfair competition. No such showing has been made, and no other provisions of the act provide the agency with discretion for establishment of ingredient labeling exemptions solely on the basis of cost.

Accordingly, FDA is withdrawing the proposal concerning the establishment of the terms "sugar" and "corn syrup" as collective ingredient designations. The agency is also denying the petitions, cited previously, that requested exemptions from requirements for the listing of specific common or usual names for sweeteners. Labels on products that do not include the names of the specific sweeteners used to fabricate the foods misbrand the products under section 403(i) of the act. Firms should take prompt steps to correct such misbranding.

2. The Sugar Association's Petition

The agency advises that the petition from The Sugar Association, Inc., requesting that FDA initiate rulemaking to establish a definition for the term "sugar" has effectively been granted.

"Sugar" is defined in 21 CFR 184.1854 (53 FR 44870, November 7, 1988). That regulation states that the terms "sucrose," "sugar," "cane sugar," and "beet sugar" are appropriate names for sucrose, which is obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated. To promote greater awareness of § 184.1854, FDA is specifically referencing it in proposed § 101.4(b)(22).

3. Grouping of Sweeteners in the Ingredient List

Although FDA considers collective terms for sweeteners to be inappropriate as substitutes for specific sweetener names, the agency believes that the use of a collective term that reflects their function (e.g., "sweeteners") as a part of the ingredient list, as suggested by the comments on the 1989 ANPRM, may be of significant value to consumers if it is followed by a list of all the sweeteners used in the food. This cumulative listing for sweeteners would be placed on the ingredient list based on the total weight of the sweeteners in the food.

This type of labeling would resolve many of the problems reported by consumers, who stated that they were misled by the prominence of added sweeteners by the practice of dispersing sweetener names throughout the ingredient list for some products. Although this practice is consistent with current ingredient listing requirements, FDA tentatively finds that it produces a result that is inconsistent with section 403(a)(1) of the act. The end result of this practice makes the ingredient list misleading with respect to the prominence of sweeteners in the food. FDA tentatively finds that it is misleading if the separate listing of sweetener ingredients on a label in descending order of predominance leads consumers to incorrectly believe that the added sweeteners constitute a smaller portion of a product than in fact is the case.

In reaching this tentative conclusion, FDA has considered consumer requests for information about the total amount of sugars in a food. However, as explained earlier in this preamble, ingredient listing requirements are not intended to assure that the food label provides consumers with all the information they may need. Instead, these requirements are limited to provide consumers with information on the substances that are combined to make a particular food product. Information on the total amount of particular component in a food, such as information on the total amount of sugars in a food, concerns the constituents of these substances and is beyond the scope of the ingredient labeling requirements.

FDA believes that label information on the precise total amount of sugars in a food is more appropriately regulated

under nutrition labeling provisions than under ingredient labeling provisions. Because many consumers may place a high value on this type of information, the 1990 amendments provide specific authority for FDA to require this information as part of nutrition labeling (sec. 2—sec. 403(q)(1)(D)). In July of 1990, FDA proposed to make the amount of sugars a voluntary element. However, in a supplementary proposal that FDA will publish shortly, the agency will propose to make sugars declaration mandatory, although the agency will also seek comments on several concerns that it has about such a requirement.

FDA recognizes that if total sugars becomes a mandatory element of nutrition labeling, the importance of grouping sweeteners in the ingredient list will be diminished. However, the agency believes that even if this were to occur, there will still be a significant need for sweetener grouping in the ingredient list because consumers could still be confused by the practice of dispersing sweetener names throughout the ingredient list. In addition, the ingredient list should provide consumers with a quick means of assessing the significance of added sweeteners and a declaration of total sweeteners does not distinguish between added and naturally occurring sweeteners. Furthermore, as indicated above, there is no certainty that the agency will ultimately decide to include total sugars as a mandatory element of nutrition labeling. The 1990 amendments permit FDA to delete nutrients from the required list of nutrients in nutrition labeling where information on the nutrients is not necessary to assist consumers in maintaining healthy dietary practices. If comments persuade the agency that consumers may not find inclusion of added sugars useful in maintaining healthy dietary practices, FDA may withdraw the proposed requirement.

Accordingly, FDA is proposing to amend its ingredient labeling regulations in § 101.4(b)(21) (21 CFR 101.4(b)(21)) to require that when more than one sweetener is used in a product, all sweeteners be listed together by their common or usual names in parentheses in the list of ingredients following the collective term "sweeteners" in the order of predominance appropriate for the sum of all the sweeteners. The agency is also proposing that the listing of the common or usual names of the individual sweeteners in parentheses be in descending order of predominance. Under this proposal, where the combined weight of all sweeteners exceeds the weight of any other ingredient, the collective grouping of all sweeteners would appear first in the list of ingredients.

For purposes of the ingredient list, FDA is proposing in § 101.4(b)(21) a broad functional definition of the term "sweetener." The agency is proposing to include within this term (1) all standardized sweeteners and table syrups provided for in 21 CFR part 168; (2) all sweeteners affirmed as GRAS or approved for use as a food additive (including but not limited to sucrose (21 CFR 184.1854), high fructose corn syrup (21 CFR 182.1866), sugar alcohols (e.g., xylitol in 21 CFR 172.395, mannitol in 21 CFR 180.25, and sorbitol in 21 CFR 184.1835), aspartame (21 CFR 172.804), malt syrup (21 CFR 184.1445), and saccharin (21 CFR 180.37)); (3) all sweeteners eligible for classification as GRAS in accordance with 21 CFR 170.30(f) that are of natural biological origin (including but not limited to, fructose, maltose, honey, and fruit syrups other than those provided for in part 168, concentrated fruit juices (except where water is added to return the concentrate to its single-strength concentration), and concentrated modified fruit juices); and (4) all sweeteners that are used in accordance with a sanction or approval granted prior to September 6, 1958. FDA has included sweeteners with prior sanction or approval in this definition in the event that such sweeteners actually exist. However, the agency is not aware of any specific substances that could serve as examples of this last sweetener category.

Under this proposal, when any of these sweeteners serve functions in foods in addition to imparting significant sweetness (e.g., imparting flavor), the ingredient will still be required to be listed among other sweeteners following the term "sweeteners." For example, when concentrated fruit juices are ingredients in fruit spreads, the juices impart flavor to the spread as well as making a significant contribution toward the sweetness of the spread. Such juices would therefore be required to be listed along with other sweeteners when they are present. However, where a juice serves as the only sweetener, it would not be identified as a sweetener because this provision of the proposal is triggered only where more than one sweetener is in a food. Furthermore, the agency does not expect concentrated juices, which are fully reconstituted to the original single strength juice through addition of water in the production of a food, to be listed as sweeteners. The agency is proposing an exemption for such situations. For example, frozen concentrated orange juice would not be listed as a sweetener when it is an ingredient in a sweetened diluted orange juice beverage.

In proposing to establish this broad definition of the term "sweetener," the agency is attempting to respond to the consumer comments that expressed a desire for information concerning the identification and prominence of all sweetening ingredients. However, FDA recognizes that it may be possible for the ingredient list to not be fully informative in this regard despite the breadth of this definition. For example, firms could use more concentrated forms of certain sweeteners (e.g., syrups and dehydrated sweeteners), which would have the effect of minimizing the prominence of sweeteners in the list of ingredients. In some situations, the concentrated sweetener would have to be labeled as "concentrated," but consumers would not know the extent of concentration. The agency solicits comments on specifically how the proposed definition could be revised to deal with such situations.

FDA recognizes that for low calorie sweeteners (e.g., aspartame), order of predominance information is of little value to consumers. These sweeteners are frequently the only sweetener used in the food, and even when combined with other sweeteners, their intense sweetness will mean that their place in the ingredient list will not accurately reflect their contribution to the taste of the food. However, FDA is proposing that these sweeteners be included in the broad sweetener definition and therefore in the parenthetical listing. More confusion about the presence of low calorie sweeteners is likely to result from their exclusion from the parentheses than from their inclusion. Moreover, inclusion of low calorie sweeteners in the listing of sweeteners will be informative to consumers. There are some low calorie sweeteners with which consumers have little familiarity (e.g., acesulfame potassium). If these low calorie sweeteners are not included in the parenthetical listing, consumers might not realize that the ingredient has a sweetening function. FDA solicits comments on the inclusion of low calorie sweeteners within the parenthetical list of sweeteners, on whether their exclusion would mislead consumers, and on alternative approaches to addressing this issue.

4. Lactose Labeling

In response to consumer concern about lactose expressed in the comments on the 1989 ANPRM, FDA advises that its ingredient labeling regulations require the listing of lactose

whenever it is used as an ingredient of food. Lactose-intolerant consumers may review ingredient lists to determine if this ingredient is present. However, these consumers should also consult ingredient lists for the presence of any milk component or milk product (e.g., whey, nonfat dry milk). These ingredients contain lactose. There is no requirement that the presence of lactose as a component of an ingredient be declared on the label, and FDA has never been presented with evidence that would justify such a requirement (see the discussion of the declaration of glutamate in section III.D.5. of this document, above). Therefore, lactose-intolerant consumers must be aware that this substance may be present in a food even if not declared in the ingredient list.

VII. Percentage Ingredient Labeling

A. Background

The responses to FDA's 1978 and 1989 requests for comments on ingredient labeling issues evidence a longstanding, strong consumer interest in percentage ingredient labeling. In 1979, the agency stated that it intended to expand the use of percentage labeling for valuable and characterizing ingredients as part of the names for foods; publish guidelines for voluntary percentage ingredient labeling as part of the ingredient statement; seek or support legislation explicitly giving FDA the authority to require percentage ingredient labeling as part of the ingredient statement; and seek or support legislation giving FDA access to a company's product formulas, quality control records, and related records to ensure that such expanded percentage ingredient labeling is truthful and accurate. However, the agency did not act on these intentions.

In response to the 1989 ANPRM, many consumers, consumer organizations, health professionals, and health organizations again expressed their support for inclusion of some form of percentage ingredient information on food labels for all, or for major, ingredients. These comments asserted that this information is necessary to inform and educate the public, to facilitate product comparisons, to enhance competition between products, and to evaluate claims about products.

Comments from food manufacturers and trade associations, however, objected strenuously to this type of labeling. Most of these comments maintained that such labeling would require disclosure of manufacturers' confidential product formulas. The comments pointed out that companies have invested considerable amounts of resources on research and development to produce these formulas and thereby to remain competitive in the food industry. Comments also pointed out that disclosing formulas through the percentage labeling of ingredients would stifle creative new product development and ultimately lead to fewer food choices. Comments advised that the labeling would limit flexibility in adjusting formulas and, in most cases, would contribute to information overload rather than consumer benefit. Further, the industry comments asserted that listing ingredients by percentage is unnecessary because it does not add information that people need in constructing a healthy diet.

B. Listing Ingredients by Order of Predominance and Mandatory Percentage Ingredient Labeling

While the act requires that food ingredients be identified on labels, it provides authority to require information on the specific amounts of those ingredients only where the ingredients have a valuable or characterizing nature (21 CFR part 102, established under authority of section 403(a) and 201(n) of the act), and where foods purport to be a beverage containing vegetable or fruit juice (section 403(i)(2) of the act). (The labeling of beverages containing vegetable or fruit juice will be discussed in a document published soon in a future issue of the **Federal Register**.) Under other circumstances, there is no basis under the act for the agency to require information on the specific amount of ingredients in food. Accordingly, FDA cannot propose to require general percentage labeling of all ingredients in all foods.

Although no authority for broad percentage labeling exists, FDA long ago determined that some information on amounts of ingredients was necessary and established the current requirement § 101.4(a)(1)) that ingredients be declared in descending order of predominance by weight. The 1989 food labeling comments suggested, however, that many consumers are not aware of this fact.

In light of this fact, FDA is now proposing to require in § 101.4(a)(3) that food labels bear a statement explaining that the list of ingredients is in descending order of predominance by weight. The proposed provision cites as an example of an appropriate statement the following: "Ingredients (in descending order of predominance by weight): _____, _____, and _____." The agency is basing this provision on sections 201(n), 403(a), and 701(a) of the act. The explanatory statement sets forth a fact that is material to an understanding of the ingredient list that is on the label.

C. Voluntary Percentage Ingredient Labeling

Although FDA has tentatively concluded that it does not have authority to require percentage ingredient labeling for all ingredients in all products, the agency recognizes that for some products with valuable or characterizing ingredients (such as those products for which 21 CFR part 102 common or usual names have been established) this labeling is needed, and that for other products, this labeling may be helpful to consumers even though it may not be critical to purchasing decisions. In fact, FDA has a policy of not objecting to firms voluntarily providing this type of labeling when the information is not misleading and is truthful in all respects. However, many firms may not be aware of this policy. Some of these firms apparently believe that such labeling is prohibited by 21 CFR 101.2(e), which prohibits inclusion of intervening material within certain required information, including the ingredient list. Such firms may not realize that the agency considers nondeceptive ingredient quantifying information to be unaffected by this provision. FDA believes that in most cases, such information enhances the required ingredient information.

Because both consumers and industry may benefit from more widespread use of percentage information, the agency considers it appropriate at this time to codify its voluntary percentage ingredient labeling policy. Accordingly, in this proposal FDA is providing for voluntary percentage ingredient labeling of all foods, both standardized and nonstandardized. FDA encourages manufacturers to provide percent information about ingredients in accordance with provisions of this proposal wherever practicable.

The agency is proposing in § 101.4(e) a uniform method for percentage declaration of ingredients to prevent consumer confusion that would be created if consumers were confronted with varying presentations of quantitative information on food labels. FDA is proposing to permit percentage declarations that are expressed in terms of percent by weight. Ingredients are required to be listed in the ingredient list in decreasing order of predominance by weight, and the agency believes that consumer confusion would be created if the percentage declarations in ingredient lists were calculated on a

different basis (e.g., volume/volume) that could produce inconsistent results.

The proposed provision will also require percentage declarations to appear in parentheses following the name of the ingredient. Further, the provision will require that percentage declarations be expressed to the nearest 1 percent, except that where ingredients are present at levels of 2 percent or less, they may be grouped together and expressed in accordance with quantifying guidance set forth in § 101.4(a)(2) (55 FR 17433, April 25, 1990). (For example, "contains ____ percent or less of ____ with the blank percentage filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate.) Firms could use percentage declarations for as many or as few ingredients that are present in the food as they choose.

VIII. Other Ingredient Labeling Issues

A. Format

A number of comments on the 1989 ANPRM requested that the format of ingredient labeling be revised to enhance the readability of the ingredient list. Some of these comments suggested that major ingredients be listed separately from minor ingredients. Other comments objected to the use of certain type styles for ingredient listing because they are less readable than other type styles. Some of these comments suggested that upper and lower case lettering also be required. Many of the comments requested that larger type size be required for ingredient listing. A few comments objected to the use of right justification (spacing adjustments for obtaining straight right margins) for ingredient listing.

FDA believes that the readability of the ingredient list should be enhanced as much as practicable. To assess the effect that the changes suggested by the comments would have on the ingredient list, the agency has had various versions of an ingredient list printed. These printings have been placed on display in the Dockets Management Branch (address above) as Ref. 40. The agency has examined these versions of the ingredient list and has tentatively concluded that a format change requiring the separation of major and minor ingredients would provide the greatest enhancement of readability with the minimum impact on the affected industry. This enhancement results primarily from the separation of ingredients that are present at low levels (minor ingredients) from the predominant ingredients of the product (major ingredients). (Minor ingredients would include all ingredients present in amounts of 2 percent or less by weight. See 55 FR 17432, April 15, 1990, comment 2.)

Although the agency believes that it would clearly improve the readability of the ingredient list to require that this list be separated into major and minor ingredients, FDA believes that its authority for doing so would rest primarily in section 403(f) of the act. This provision requires that all information required to appear on the label or labeling be placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. However, the comments did not submit any evidence that current ingredient listing requirements do not fully satisfy this section of the act. Without such evidence, FDA has no basis to propose new requirements to enhance readability. If such evidence is provided in the comments to this proposal, however, the agency will consider, depending on what this evidence shows, requiring separation of major and minor ingredients in the final rule.

Of course, an improvement in readability would result if FDA were to increase type size requirements, but the agency recognizes that such requirements would significantly increase the total ingredient display area. Many packages simply do not have sufficient room for such an increase. For example, two of the format printings that the agency had prepared (Ref. 40) had type size differences of only one-sixtyfourth inch in height. (One printing was in 6-point type (printing number 1) and the other printing was in 8-point type (printing number 8).) This increase in type size, spread throughout the ingredient list, resulted in an increase in total display area of 1.7 square inches.

The increase in total ingredient display area that would result from the separation of major and minor ingredients is, however, much less. For example, two of the format printings varying only in this separation (printing numbers 1 and 4) differed in display area by only 0.8 square inches. FDA considers that such an increase is likely to be the maximum that is practicable because larger increases would require significantly more package area, which, in many cases, would not be available.

Although other suggested format changes for ingredient lists do not appear to provide a significant enhancement of readability, FDA recognizes that consumers may have different views on this matter. FDA therefore specifically requests comments on this issue from all interested parties.

B. Restaurant Foods

Most consumer and consumer organization comments in response to the 1989 ANPRM favored some form of ingredient labeling for restaurant foods. Comments from restaurants, however, opposed imposition of ingredient labeling requirements, pointing out that this type of labeling presents significant feasibility problems in a number of situations. The comments from restaurants made the following points: Restaurants may not be able to develop consistent ingredient information on the foods that they sell because of frequent menu changes and variations in how the consumer wants the food prepared and served. For example, some specialty restaurants frequently vary the dishes that they serve. Moreover, many restaurants have menu items that vary daily, such as salad bars. Under these circumstances, the ingredient order of predominance information, as well as the ingredients themselves, could change throughout each day. Without ingredient consistency, frequent changes in ingredient labeling information would be necessary. These changes could become burdensome and costly, especially for small firms. As a result, firms could be inhibited from making frequent menu changes or be forced to limit the options that consumers will have in ordering a food. Further, comments pointed out that consumers can already obtain ingredient information at many restaurants, if they desire, by asking for it.

FDA believes that when the frequent changes cited by the restaurant comments are made, restaurants cannot reasonably be expected to provide information concerning ingredients. However, the agency also believes that it might be feasible for certain types of restaurants (e.g., "fast food" restaurants with standardized food preparation and ingredient specifications) to provide ingredient information. FDA does not, however, have sufficient information about the food service industry to be able to determine whether ingredient labeling by restaurants should be required and, if so, in what circumstances. The agency is, therefore, not in a position to propose ingredient labeling requirements for restaurants at this time.

However, the agency solicits comments on criteria that it can use to determine which types of restaurants, if any, can practicably provide ingredient

labeling information. Such comments should recognize that FDA would consider a variety of alternatives for how this information should be presented, and that the agency would not require that restaurant food itself be labeled. For example, the agency proposed alternative methods for public display, at point of purchase, of labeling information for food not in package form (although not restaurant food) in the nutrition labeling proposal published in the **Federal Register** of July 19, 1990 (55 FR 29487 at 29504). Under the proposal, the display could appear in a counter card, sign, tag affixed to the product, or some other appropriate device. FDA also proposed that the required information could be placed in a booklet, looseleaf binder, or other appropriate format available at the point of purchase. FDA requests comments on the use of these alternative methods for displaying ingredient information in the restaurant setting.

C. Vendor Foods

The automatic food vending industry requested an exemption from full ingredient labeling for commissary-prepared food (ready-to-eat foods prepared in a central location for sale by vendors) sold through automatic vending machines and by mobile catering trucks. The exemption request proposed that labels for this food be required to state only the principal ingredients of the food in descending order of predominance along with whether the food contains any artificial colorings, flavorings, and chemical preservatives. The vending industry alleged that it is confronted with the same feasibility problems as restaurants; that the requirement that all ingredients be listed results in labels of inordinate size; and that this requirement limits freedom of recipe adjustment.

The agency does not agree that commissary-prepared food should receive any ingredient labeling exemptions. This food is frequently in package form, whereas restaurant food is generally not in package form. Further, restaurant food is frequently prepared at the consumer's request, but commissary-prepared food is prepared in a more standard manner. Consequently, FDA sees little similarity between these types of food. The agency advises that when commissary food is in package form, the food will continue to be subject to full ingredient labeling requirements.

The agency believes that requiring commissary operators to label all ingredients is no more burdensome than requiring other assemblers of multicomponent food items to label all ingredients. Moreover, the comments that requested an exemption failed to submit evidence that would support a finding that it is impracticable for commissaries to consistently use the same components in assembling multicomponent foods.

The agency has not been persuaded that it is impracticable for the commissary food industry to comply with the full ingredient labeling requirement, or that compliance with that requirement is causing deception or unfair competition. Because the statutory criteria for exemption under section 403(i) of the act have not been met, the promulgation of an exemption from full ingredient labeling for vendor foods cannot be justified.

D. Fresh Fruits and Vegetables

1. Pesticides

Some of the comments requested that the agency require that fresh fruits and vegetables bear labeling listing substances such as pesticides that have been used on these foods. These comments contended that consumers had the right to know everything that is in the foods they purchase.

The only statutory authority for requiring label declaration of the pesticides present in a food appears in section 403(l) of the act. This provision requires that pesticides applied to a food after harvest be declared in labeling on the shipping container. However, this provision also states that no such labeling shall be required when the food is removed from the shipping container and is displayed for sale at retail in accordance with the custom of the trade. Thus, FDA is specifically prohibited from issuing regulations requiring retail labeling for postharvest pesticides.

The agency believes that the labeling prohibition pertaining to postharvest pesticides also extends to preharvest pesticides since the same type of labeling problems would be encountered with both types of application. Congress established the prohibition in section 403(l) of the act because retail postharvest labeling is not practicable (Ref. 41). Moreover, pesticide chemicals in raw agricultural commodities are specifically excluded from the requirement in section 403(k) of the act that chemical preservatives be identified as such.

Even if it had authority to require pesticide labeling, FDA would face significant problems in enforcing such a requirement. For example, pesticides may be present in such small amounts that they cannot be readily detected. In fact, pesticides may be applied to a commodity and not be present at all when the product is marketed. Moreover, the fact that fresh produce sold at retail usually consists of mixed lots would make accurate pesticide labeling extremely difficult for retailers.

All of these problems would be magnified for preharvest pesticide labeling. In fact it is likely that enforcement problems would be greater for preharvest pesticides because the application of the pesticides would not necessarily have occurred at a single location (e.g., individual farmers might use different pesticides at different times). In view of the significance of these problems, the agency is not prepared to seek statutory authority to require pesticide labeling at this time.

2. Wax or Resin Coatings

a. *Background.* For many years, FDA has advised that the presence of wax coatings on fresh fruits and vegetables must be declared by listing the common or usual names of the specific wax ingredients in labeling at the retail establishment. The agency provided this advice in the preamble to the final regulation on incidental additives in the **Federal Register** of August 2, 1973 (38 FR 20704 at 20705). In comment 7, FDA stated:

> One comment proposed that if an open container of a fresh fruit or vegetable is displayed at retail without labeling then it should be required to bear its interstate label or a counter card, sign or other device listing the ingredients.
>
> The Commissioner advises that if fresh fruits or vegetables retailed from bulk containers contain additional ingredients within the meaning of 403(i)(2) of the act, for example waxed fruits, they are required to be labeled in accordance with section 403(i)(2) of the act or the exemption provisions of § 1.10a(a)(2).

[Section 1.10 a(a)(2) was subsequently recodified and is now § 101.100(a)(3).]

This statement makes clear FDA's position that section 403(i)(2) of the act and the ingredient labeling regulations (including 21 CFR 101.4 and 101.100), which were promulgated, at least in part, under the authority of section 403(i)(2) of the act, apply to produce with wax or resin coatings. It also makes it clear that FDA believes that the only ingredients on such produce that are exempt from label disclosure are those that qualify as incidental additives. However, produce sold in small open containers is exempted from ingredient listing requirements under section 405 of the act. (In 21 CFR 101.100(c), a small open container of

fresh produce is defined as one that is not more than 1 dry quart.)

Agency policy on this matter has also been set forth in Compliance Policy Guide (CPG) 7120.08 which states, in part:

> Waxed fruits and vegetables are subject to the requirements of section 403(i)(2) of the Act and 21 CFR 101.100(a)(3) of the regulations. Therefore, the absence of a proper declaration of ingredients by retail establishments on the sales bin or counters renders the food misbranded under section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act.
>
> FDA encourages enforcement action by the states as the most efficient and manageable approach to achieving compliance with the requirement at the retail level.

Compliance with these ingredient labeling requirements has been limited, at best. In fact, a petition (November 20, 1990—Docket No. 90P–0404) concerning these requirements from the United Fresh Fruit and Vegetable Association, the Produce Marketing Association, the Food Marketing Institute, and a New York Kosher Food Advisory Council ("the joint petition") advised that wax coatings have been used on fresh fruits and vegetables for many years without label declaration. This situation is probably the result of the fact that FDA generally does not engage in enforcement activity at the retail grocery store level. Instead, the agency directs its enforcement activities primarily to those firms engaged in the manufacture and distribution of food, so that FDA's limited resources can have the greatest impact.

b. *The Joint Petition.* i. *Requested provisions.* The joint petition requests that FDA propose new regulations permitting shippers of fresh fruits and vegetables treated with a postharvest coating of food-grade waxes or resins to disclose the presence of these substances through declaration of collective terms on the shipping container or on a placard inserted in the shipping container. These terms would advise if the produce is (1) coated with food grade vegetable or mineral based wax or resin, (2) coated with food grade lac-resin (i.e., a coating made up of a secretion of the lac insect), or (3) coated with food-grade animal based wax. The joint petition also requests that the retail establishment be permitted to disclose the existence of wax or resin coatings by displaying (1) the shipper's shipping container labeling in a conspicuous place in the produce section of the store or (2) labeling provided by the retailer.

Under the petition, retailer labeling would be placed on a sign in the produce department or on the produce department's plastic bags. Retailers would have to disclose the type of wax or resin that may have been used on the produce through use of the same collective terms as the shippers. Following a statement that produce items that "may" have been coated with a wax or resin, there would be a listing of the individual produce items that could have been coated with a particular type of coating. The joint petition asserts that the requested provisions will meet the needs of both consumers and industry. However, retailer labeling would not have to state that the produce items had actually been coated with a wax or resin.

ii. *Basis for requested provisions.* (1) *Absence of current labeling provisions.* The joint petition states that the industry does not believe that any labeling provisions exist that specifically apply to fresh fruits and vegetables coated with food grade wax. This position is based on the contention that wax and resin coatings are not ingredients because they do not change the natural characteristics of fresh produce. The joint petition argues that waxing serves to replace the natural waxes that retard moisture loss, maintain freshness, and protect the outer surface of the fruit or vegetable from scarring. The joint petition states that natural coatings are generally lost when the product is harvested and washed before packing. Further, the joint petition alleges that there are no consistent regulations or rulings that tell the shipper or the retailer what the label should state, or where the placard or shipping container label should be displayed.

(2) *Impracticability of listing specific ingredient information.* The joint petition maintains that full ingredient labeling showing the common or usual name of the waxes or resins that have been applied to fresh fruits and vegetables is impracticable for retailers. The joint petition states:

> The vast majority of fresh produce sold in the United States today is sold in bulk form (unpackaged). This trend to bulk displays has been driven by consumer demand for variety and choice. To meet this demand, the typical supermarket today carries some 200 produce items. These items are constantly moved within the produce department's display area, depending on season, availability and marketing conditions. In these circumstances individual counter cards providing waxing information are not possible. In many cases, there is simply no room for such cards or so little room that the card would have to be extremely small. And given the constantly changing nature of the produce displayed, it would be a monumental, perhaps impossible, task to assure that the right sign always appeared in the right spot at the right time.
>
> This difficulty is magnified because shippers often change their coatings depending on conditions at the time of packing. Additionally, the same items received from different growing areas may well contain different coatings which contain different ingredients.
>
> For example, a grocery store displaying tomatoes will likely have received these tomatoes from shippers in several growing areas. On any given day, the tomatoes offered for sale might have one type of wax while on the next day the coating might change. Moreover, as sources of supply change, the items on the display might be rotated and the product commingled. One display case might in these circumstances have several different kinds of waxes or resins.

In addition, the joint petition maintains that full ingredient labeling is impracticable for packing houses. The joint petition advised that many packing houses use several different kinds of coating depending on supply, cost, and the market for which the product is shipped.

A comment on the joint petition from the Dole Fresh Fruit Company (Comment No. 2, Docket No. 90P–0404) elaborated on the variability in the use of coatings. It pointed out that any single shipment of fresh produce may contain shipping containers with produce coated with several different waxes. The comment stated that Dole uses at least 13 waxes that are composed of 29 different ingredients. The Dole comment stated, "The particular wax used changes constantly within a growing season, based on availability and other factors." In a February 7, 1991 letter to FDA (Comment No. 4, Docket No. 90P–0404), Dole advised that in addition to availability, some of the reasons for changing waxes include cost, different functionality needs for different products, grower demand for particular waxes, time of the growing season (i.e., certain waxes are used on fruit picked early in the season while different waxes may be used on fruit picked later in the season), and the destination of the fruit.

In a February 19, 1991 supplement to its petition, the joint petitioners stated that the impracticability of providing specific ingredient information is intensified greatly by the fact that produce with different coatings may be commingled within individual shipping containers by packers. The petitioners explained that "it is a common practice for primary packers to place bulk produce in storage, until needed—depending on market demand and price. Stored produce from various lots, which may not have been coated with the same formula, eventually may be

combined in a single shipping container. Contributing to the possibility that produce with different coatings may be commingled is the fact that primary packers may obtain produce from other primary packers to meet demand requirements and shortages."

The petitioners also stated in the February 19th supplement that there are thousands of repacking operations in the U.S., ranging from major terminal markets to specialty gift packers. The petitioners advised that these repackers purchase wax coated produce from multiple sources and repackage the majority of the produce to meet the specific quality and quantity requirements of their customers. The petitioners stated:

> The specifications of the repacker's customers often require produce of a certain quality grade, size, color, ripeness, or other characteristics. To meet these requirements, the repacker must be able to combine produce from different shipments, which may not have been coated with the same wax formula. The perishability of the produce and the accompanying time constraints in shipping add to the need to combine available produce from different shipments. For repackers to avoid the commingling of produce with different formulas would seriously impede if not prevent the repackers from meeting the shipment demands and specifications of their customers.

Further, the supplement asserted that specific ingredient information would not be meaningful to consumers or retailers. The supplement contended that consumers are primarily interested in whether the character of the wax is of an animal, vegetable, mineral, or lac resin nature. The supplement stated that both consumers and retailers would have trouble determining this nature if specific names of wax ingredients such as "coumaroune-idene resin" are provided for coated produce. It contends that the most economical and practical means for labeling shipping containers is prestenciling. According to the petition, prestenciling is economical only when the label declaration is broad enough to embrace several different types of waxes or resins. Thus, according to the joint petition, a label statement such as "coated with food-grade vegetable and/or mineral wax or resins" would provide sufficient flexibility to permit prestencilling.

iii. *Need for compliance guidelines.* The joint petition also asked for a ruling that compliance with the suggested regulation will be considered compliance with the law pending establishment of a final regulation.

c. *Agency Response to the Joint Petition.* i. *Absence of current labeling provisions.* Assertions that wax and resin coatings on food are not ingredients are incorrect. FDA's longstanding view (38 FR 20704 at 20705 (August 2, 1973); CPG 7120.08) is that a raw agricultural commodity in its untreated and natural state is not a fabricated food. When waxes are applied to a raw agricultural commodity after harvest, however, it is no longer in its true natural state. Further, as the joint petition acknowledges, waxing serves to replace the natural waxes that retard moisture loss and maintain freshness. Section 101.22(a)(5) of FDA's regulations defines the term "chemical preservative" as "any chemical that, when added to a food, tends to prevent or retard deterioration thereof. * * *."Waxes clearly meet this definition. Accordingly, a commodity with a wax or resin coating is a "fabricated" food because it contains preservatives that are not natural constituents of the food.

In enacting section 403(i)(2) of the act, Congress recognized the right of consumers to know the identity of substances added to the foods they eat. There is no indication in the legislative history of this provision that Congress intended to exempt waxes applied to produce from its coverage. This section specifically states that each ingredient in a fabricated food must be declared by its common or usual name, with the exception of spices, colorings (other than certified colorings), and flavorings, which can be declared as such. Based on section 403(i)(2), FDA adopted 21 CFR 101.4 (a) and (b), which restate the requirements of section 403(i)(2) and clarify that, except in the case of spices, flavorings, and some colorings, unless a specific exemption is established by regulation, the name of an ingredient shall be a specific name and not a collective (generic) name.

In view of the fact that the agency has not established an exemption from ingredient declaration for waxes or resins on fresh fruits and vegetables, the provisions of 21 CFR 101.4 (a) and (b) apply to these foods. Thus, the joint petition's assertion that there are no labeling provisions for these foods is not correct. All ingredient information about wax or resin coatings must be provided in labeling, or the fresh fruits and vegetables are misbranded.

There is nothing in the 1990 amendments that is inconsistent with this view. It is true that in section 5 of these amendments, Congress revised section 405 of the act to limit the exemption for fresh fruits and vegetables in small open containers so that it would not apply to the requirements of sections 403 (q) and (r) of the act and did not include a similar limitation for ingredient labeling. However, Congress's failure to do so cannot be seen as an indication that it no longer wants fresh fruits and vegetables to bear ingredient information. If an implication with respect to ingredient labeling is to be drawn from this action (and FDA considers it questionable at best to do so), Congress' action is more logically viewed simply as a reaffirmation of the current situation, including FDA's stated position.

As noted in the joint petition, FDA has advised that ingredient labeling information must be displayed in a conspicuous place where the produce is sold in bulk. The agency believes that it is not necessary to provide any additional guidance because retailers should be permitted to decide how to conform to this requirement given the circumstances in their establishment.

ii. *Impracticability of labeling requirements.* FDA has been persuaded that there may be some situations for retailers, packers, and repackers in which fresh produce cannot practicably bear labeling with the specific ingredient names of waxes or resins. For retailers, the agency has reached this tentative conclusion because of the joint petition's descriptions of fresh produce marketing practices involving constant change of: (1) Individual produce items and their display areas; and (2) Types of coatings applied by the various packing houses. For packers and repackers, the agency has reached this tentative conclusion because of descriptions of coating variability problems that occur with a high frequency. Where these problems are present, costs of labeling the produce with the common or usual names of the waxes or resins used may be significantly increased, and packers will surely pass these costs on to consumers. FDA does not believe that these costs can be justified if consumer needs can be met through alternative labeling provisions. Consequently, FDA is proposing to revise its regulations to provide relief to both retailers and packers (see section VIII.D.2.c.iv. below).

The agency is proposing to permit retailers to use appropriate collective names because of the constant change of produce items in marketing areas. Moreover, repackers and packers will be able to use these names when they are unable to adhere to a consistent pattern of wax or resin use on the produce. Section 403(i)(2) of the act provides for ingredient labeling exemptions only where compliance is impracticable, or where compliance results in deception or unfair

competition. Only when a packer or repacker is unable to adhere to a consistent pattern of wax or resin use is one of these statutory conditions met. The agency is not persuaded by the other arguments that specific ingredient information should not be required. Where produce lots consistently have the same type of coating, firms clearly have the ability to provide ingredient labeling information concerning that coating. While providing ingredient labeling may increase costs for packers, such costs are already incurred by almost all other firms that produce food. Further, assertions that specific ingredient names are not meaningful are not valid because some specific ingredient names for wax or resin ingredients would be meaningful to consumers (e.g., beeswax, carnauba wax, rice bran wax.)

iii. *Adequacy of requested provisions.* FDA tentatively finds that it cannot grant the petition's request for retailers to comply with section 403(i) of the act with a statement that the produce that "may" have been treated with wax or resin coatings. This labeling would be of virtually no use to consumers because it would not advise them whether the produce had a wax coating. Further, to grant this request would be to deny the comments on the 1989 ANPRM that requested more specific information on the ingredients in fresh produce. The petition did not provide an adequate basis to do so.

In addition, the agency believes that the suggested alternative of ingredient information on plastic bags available in the produce department would not provide consumers with this information at the time they actually make purchase decisions. FDA believes that consumers generally make these decisions before placing produce in bags. Further, the agency doubts that consumers would notice ingredient information because the bags are usually distributed in rolls.

Accordingly, FDA is not proposing to adopt the approach requested by the joint petition. However, the agency solicits comments on this approach. If comments persuade FDA that its tentative finding in this matter is incorrect, and that the requested approach will actually meet the needs of consumers, the agency can adopt it in any final rule that it issues based on this proposal.

iv. *Proposed provisions.* In view of FDA's tentative finding that specific ingredient labeling at retail may be impracticable for fresh produce with wax or resin coatings, the agency has attempted to identify that information that would meet the needs of consumers and yet still be practicable for retailers to provide. The agency sees merit in the categories of waxes and resins set out in the joint petition because these categories would convey some source information to consumers. However, FDA recognizes that the practice of commingling produce could hinder accurate declaration of the applicable wax or resin category.

FDA believes that the needs of most consumers would be met if information is provided at the point of purchase on whether the produce has an animal-based wax coating, some other type of wax or resin coating, or no wax or resin coating at all. With these general categories, retail produce segregation problems would be minimized, and the burdens of retail labeling would be considerably less than under current labeling requirements. With these burdens lessened, compliance with produce ingredient labeling should increase markedly, and consumers should benefit.

Accordingly, FDA is proposing to revise the ingredient labeling provisions in 21 CFR 101.4 by adding a new paragraph (b)(25) to permit waxes and resins on fresh produce to be declared based on the three general categories described above. The proposal provides that waxes and resins may be declared on fresh produce by use of either the phrase "coated with food-grade animal-based wax" or the phrase "coated with a food-grade vegetable-, mineral-, beeswax-, and/or shellac- (or lac-) based wax or resin, as appropriate." If no wax is used on the produce, no declaration need be made.

The proposal does not require that the preservative function of the waxes or resins be included in either of these phrases because FDA believes that consumers generally recognize that this function is associated with the terms "wax" and "resin" for produce. Thus, for produce, these terms fulfill the requirements of § 101.22(j) and section 403(k) of the act with respect to the declaration of the preservative function. The agency specifically requests comments on this point.

Although FDA is proposing to permit the use of the term "mineral" in the designation of one of these categories, the agency is concerned that this term may not be adequately informative to consumers because it is also used with foods to refer to minerals such as calcium and magnesium. On fresh fruits and vegetables, however, the term will be used to encompass all coatings that are not of animal or vegetable origin, such as petroleum or other hydrocarbon-based waxy substances. FDA solicits comments on whether some other term, such as "petroleum-based" or "hydrocarbon-based," would be more meaningful.

In addition, FDA is proposing a number of other changes in its regulations to eliminate any doubts as to whether all fresh produce must bear ingredient labeling information when wax or resin coatings have been applied. Proposed paragraph (b)(25) states that wax and resin ingredients on fresh produce shall be declared either individually by their common or usual names or collectively as discussed above. The agency is also proposing a new paragraph (f) in § 101.4 which states that ingredients that must be declared in labeling because there is no label for the food shall be listed prominently and conspicuously by their common or usual name. (Section 201(k) of the act states that the term "label" means a display of written, printed, or graphic matter upon the immediate container of any article. Section 201(m) of the act states that the term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.)

Further, FDA is proposing changes in the ingredient listing exemption in 21 CFR 101.100(a)(2). This provision exempts food sold at retail establishments from ingredient listing requirements when the food is received in bulk containers, and the labeling of the food is displayed to the purchaser; or when a counter card, sign, or other appropriate device bears the required ingredient information in a prominent and conspicuous manner. The provision has no specific minimum height requirements for the ingredient information. Because the agency believes that type of less than ¼ inch in height would not generally be adequate for consumers to read easily at a produce bin, FDA is proposing that § 101.100(a)(2) be revised to require that labeling information appear in not less than ¼ inch type wherever the exemption is used. FDA recognizes that arguments can be made that a larger or smaller type size is more appropriate. The agency therefore solicits comments on this issue.

v. *Need for compliance guidelines.* FDA cannot grant the exemption requested by the joint petition from current ingredient labeling requirements pending establishment of a final regulation. Such an exemption would limit agency discretion and have a present, binding effect. We believe that such a binding exemption should be issued through notice and comment procedures. Thus, the agency disagrees

with assertions in a comment on the joint petition from the Dole Fresh Fruit Co. (Comment No. 2, Docket No. 90P–0404). This comment contended that the agency has authority to grant the requested exemption. Although the agency has carefully considered the arguments in that comment, FDA is not persuaded that it can grant the exemption without appropriate rulemaking procedures.

The publication of a proposed rule provides an indication of the agency's views on the desireable content of a final regulation, prior to review of any comments that the agency may receive. Naturally, it is likely that the agency will exercise its enforcement discretion in accordance with those views. However, pending final agency action on this matter, any manufacturer, patker, or distributor who fails to label its produce in accordance with current ingredient labeling requirements does so at the risk that the produce will be subject to regulatory action.

E. Warning Statements

A number of consumers requested that FDA require the use of warning statements or symbols to announce the presence of certain ingredients, such as ingredients derived from dairy products or hydrolyzed vegetable protein. Many of these comments were based on the consumers' desire to avoid certain ingredients because of general concerns about safety or because of a specific health problem.

When confronted with a problem that threatens the general public, FDA has promulgated regulations requiring the placement of warning statements on the food label. For example, in 21 CFR 101.17(d), the agency requires a warning on protein products promoted for weight reduction. However, FDA is unwilling to require a warning statement in the absence of clear evidence of a hazard. If the agency were to require warnings for ingredients that only cause mild idiosyncratic responses, it is concerned that it would overexpose consumers to warnings. As a result, consumers may ignore, and become inattentive to, all such statements.

Based on its consideration of the practicality and desirability of requiring warnings on labels to announce the presence of specific ingredients, the agency has tentatively concluded that the information present in the ingredient list is adequate to enable the consumer to avoid ingredients of concern.

F. Simplified Names for Ingredients

Several comments requested that simplified terms be used in place of chemical or technical words in the ingredient list.

A basic requirement of the act is that ingredients be declared by their common or usual names. Although ingredient names required under the present labeling requirements are often technical, they represent the generally accepted name of the ingredient. In this regard, the names are responsive to consumers' expressed interest in exact specification of ingredients in food products.

For a coined new name to supplant an established name, the new name must be descriptive of the additive, must not provide misleading label information, and must be shown to be recognized by consumers (Ref. 42). Consumers can learn the new name by seeing the new name in parentheses following the established (recognized) chemical name. After the two names have appeared together for a sufficient time, reasonable grounds would exist for believing that the new name is recognized as the common or usual name of the food ingredient in the minds of manufacturers, distributors, users, and consumers. When the criteria stated in this policy have been met, the agency, usually in response to a petition submitted under 21 CFR 10.30, may provide for the use of that new name and allow the chemical name to be dropped from the ingredients list.

BHA (butylated hydroxy anisole), BHT (butylated hydroxy toluene), and canola oil (low erucic acid rapeseed oil) are examples of shorter, simpler names that can now be used after having become widely known using this procedure.

FDA has not been presented with any basis for changing its policy. It is open, however, to suggestions for procedures that would more rapidly allow the use of alternate names but at the same time would ensure that the name will adequately identify the ingredient.

G. Statements of Ingredients' Functions

Some comments asked the agency to require that the function or purpose of food ingredients be stated parenthetically after the name of the ingredient in the ingredient list.

The act specifically requires in section 403(k) (21 U.S.C. 343(k)) that when a food contains any artificial flavoring, artificial coloring, or chemical preservative, the label must state that fact. This requirement, and specific provisions for the required declarations, are codified at § 101.22. In addition, the act provides in section 409(c) (21 U.S.C. 348(c)) that in approving a use of a food additive, FDA can establish labeling requirements that it deems necessary to assure the safe use of the additive. The agency also has authority to require information on the label when the information is a material fact with regard to other representations made on the label or to consequences of use of the food under normal circumstances (21 U.S.C. 321(n)).

While comments have expressed the desire of some consumers for declaration of ingredients' functions, they have not provided an explanation of why the agency can and should require such a declaration. FDA will, however, consider any suggestion for declaration of the function of a particular ingredient or group of ingredients that is supported by appropriate evidence and that can be justified under one of the relevant statutory standards.

H. Irradiated Ingredients

A number of comments expressed a desire for the identification of irradiated ingredients on food labels.

The agency addressed this issue in the **Federal Register** of December 30, 1988 (53 FR 53176). The agency concluded that the labeling requirements for irradiated ingredients should be the same as for other processed ingredients, namely that they be declared by their common or usual name without requiring details on how they were processed (53 FR 53204).

Because the comments did not present any information that would cause FDA to reconsider this conclusion, the agency finds no basis on which to revise its 1988 conclusions.

I. Preemption Provisions of the 1990 Amendments Affecting Ingredient Labeling

The 1990 amendments included several provisions pertaining to Federa1 preemption of State and local labeling requirements. Specifically, section 6(a) of the 1990 amendments prohibits a State or a political subdivision of a State from establishing or continuing in effect any labeling requirement for food in interstate commerce that is not identical to certain provisions of section 403, including sections 403(i)(2) and 403(k) which pertain to ingredient labeling (section 403A (a)(2) and (a)(3) of the act). The 1990 amendments also preempt any State or local standards of identity for foods that are the subj ect of standards of identity established under section 401 of the act (21 U.S.C. 341) that are not identical to the Federal standards (section 403A(a)(1) of the act).

Congress included the preemption provisions in the 1990 amendments because it recognized that it would be

difficult or impossible for food companies to operate in interstate commerce if they are confronted with conflicting and inconsistent Federal, State, and local requirements (Ref. 43). However, Congress also recognized that Federal preemption should only apply in matters where a strong Federal regulatory system is in place (Ref. 43). Congress also recognized a role for the States, permitting them to petition the Secretary for exemption from the preemption provisions in situations where the State requirement does not conflict with Federal law, does not burden interstate commerce, and addresses a need that is not met by the preemption provisions of the amendments (section 403A(b) of the act).

The preemption provision concerning foods subject to standards of identity established under section 401 of the act became effective upon enactment of the amendments (sec. 10(b)(1)(A), 1990 amendments). Accordingly, the proposed revisions in 21 CFR 168.110 and 168.111, amending the permissible names for dextrose anhydrous and dextrose monohydrate, will preempt any State or local requirement to the contrary if these revisions become final rules.

The preemption provision concerning section 403(i)(2) of the act (this section requires the label of a food to list all ingredients of the food by their common or usual name, except that flavorings, spices, and certain colorings may be declared collectively) will become effective 1 year after the date of enactment (sec. 10(b)(1)(B), 1990 amendments). The preemption provision concerning section 403(k) of the act (this section generally requires the label of foods containing any artificial flavoring, artificial coloring, or chemical preservative to state that fact) does not become effective until the Secretary determines that this section of the act is being adequately implemented by Federal regulations (sec. 10(b)(1)(C), 1990 amendments). The amendments direct the Secretary to enter into a contract with a public or nonprofit private entity to study laws and regulations at the Federal, State, and local levels pertinent to section 403(k) (and other provisions of section 403 not relevant to ingredient labeling) to determine whether Federal regulations adequately implement these sections (sec. 6(b)(1), 1990 amendments). The amendments also direct the Secretary to issue a proposed list (within 9 months of enactment) and a final list (within 24 months of enactment) of the sections of the act that are and that are not being adequately implemented (sec. 6(b)(3), 1990 amendments). Under the amendments the Secretary may also propose revisions (within 24 months of enactment) and issue final revisions (within 30 months of enactment) to any regulations found to be inadequate (sec. 6(b)(3), 1990 amendments).

The proposed regulations in this document affecting ingredient labeling, with the exception of proposed 21 CFR 101.4(b)(21) (which requires the grouping of sweeteners in the ingredient list) and § 101.4(d) (which requires source declaration for caseinate ingredients of nondairy foods), are issued in whole or in part under seetion 403(i)(2) of the act. Accordingly, if these regulations become final rules, they will preempt any State or local requirement of the same type 1 year after the enactment of the amendments (enactment was on November 8, 1990).

Proposed §§ 101.4(b)(21), 101.4(d), and the portion of proposed 101.22(h)(7) that requires the identification of the source food in the declaration of a protein hydrolysate, are issued under sections 201(n) and 403(a) of the act. The 1990 amendments did not state that sections 201(n) and 403(a) have preemptive effect (sec. 6(c)(1), but see sec. 6(c)(3), 1990 amendments).

The portion of proposed § 101.22(k) concerning the declaration of an artificial coloring in the ingredient list for the purpose of complying with the requirements of section 403(k) of the act is issued under section 403(k). As explained above, the Secretary must determine whether regulations issued under section 403(k) adequately implement this section of the act before such regulations become preemptive. Should proposed § 101.22(k) be adopted, it will be included in the Secretary's review.

IX. Economic Impact

The food labeling reform initiative, taken as a whole, will have associated costs in excess of the $100 million threshold that defines a major rule. Therefore, in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is developing one comprehensive regulatory impact analysis (RIA) that will present the costs and benefits of all of the food labeling provisions taken together. When this RIA is finalized, a notice of its availability will be published in the **Federal Register**, and it will be made available at the Dockets Management Branch (address above). The costs of compliance with this proposal alone are, nevertheless, discussed below.

In this document, FDA is proposing changes to the food label that will, for the most part, codify changes mandated by the 1990 amendments. Costs which will be incurred as a result of the provisions of the 1990 amendments covered by this proposed regulation are expected to be $250 million. The requirements of this proposed regulation not directly mandated by the 1990 amendments will become effective concurrently with mandatory nutrition labeling and, therefore, will have no incremental costs associated with them.

A. Benefits

The proposed labeling changes will benefit consumers by giving them information to refine their food choices for health, religious, or other reasons. While it is not possible to quantify the benefits of the particular requirements in this proposed regulation, FDA will estimate the benefits of the food labeling reform initiative as a whole. Those benefits include reduced coronary heart disease and cancer as a result of people making more informed food choices. Other benefits not quantified by the agency will be benefits to consumers attempting to control weight or diabetes from listing of sugars, benefits to those consumers who wish to avoid artificial colors, and benefits to vegetarians, as well as others attempting to follow religious proscriptions, from a provision to label sodium caseinates as dairy products. There will also be benefits to sulfite-sensitive individuals as a result of labeling the presence of sulfites in standardized foods.

B. Costs

The agency has estimated that approximately 14,000 firms will have to modify 94,000 labels. The direct costs of modifying these labels include administrative costs, printing costs, and inventory costs. Some of the firms affected by this proposed regulation are also affected by the proposed percent juice labeling regulation requiring labeling of fruit and vegetable juices. Costs for those firms are estimated as a component of the percent juice labeling regulation and are not included in this analysis. Additionally, there may be reformulation and marketing costs, but it is questionable whether these indirect costs are solely attributable to the law.

The administrative costs associated with the law are the dollar value of the incremental administrative effort expended in order to comply. The administrative activities which are anticipated to be undertaken by firms in response to a change in a regulation include: Identifying and interpreting the

policy, determining the scope and coverage related to the firms' product labels, formulating a method for compliance, and management of the process of compliance. The agency estimates administrative costs to be $20 million.

Printing costs are the costs of changing the labels to reflect the new requirements. The amount of printing costs assigned to a mandated printing change depends on the number and type of labels, the complexity of the label change, and the length of time allowed to make the change. FDA has estimated these costs to be $90 million.

Label inventory costs are the costs associated with discarding labels, which may include actual food containers. These costs vary with both the time given for firms to comply and with average inventories of labels and are estimated to be $140 million. The $140 million label loss is based on strict adherence to the statutory timeframes for compliance.

C. International Effects

In accordance with Executive Order 12291 and other guidance received from the Office of Management and Budget (OMB), FDA has also evaluated the effects of this proposed regulation on international trade. Guidance received from OMB requires agencies to make no explicit distinction between domestic and foreign resources when calculating costs and benefits of regulations. With the exception of the two voluntary provisions in this rule, all the other provisions are mandatory. However, these provisions are not generally mandatory in Canada, the European Economic Community, or other trading partners of the United States.

Provisions of this proposed rule will cause foreign firms to have to change their English label in order to market their food products in the United States. Also, because of different definitions for various micronutrients, additional analytical testing will be required to market across borders. These costs should be identical to those incurred by domestic firms to meet the requirements of this proposed regulation. Thus, as is generally true now, both importing and exporting firms must relabel in order to sell outside of their national boundary.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Effective Date

In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA proposed a nutrition labeling rule that, if finalized, would result in labeling changes for a large number of foods. The July 19th document proposed an effective date of 1 year following publication of a final rule. However, section 10 of the 1990 amendments has statutorily established a different effective date. The new effective date is 6 months following publication of a fina1 rule. If no final rule has been issued by November 8, 1992, however, any proposed rule issued under the 1990 amendments is statutorily mandated to be considered the final rule, and the new effective date would be 6 months following that date, i.e., May 8, 1993. FDA is proposing to make the ingredient labeling regulations in the current proposal effective on the same date as the nutrition labeling rule. Both proposals are part of DHHS' major initiative to reform the nation's food labeling system and part of the Department's response to the 1990 amendments.

Although FDA is proposing to make these ingredient labeling regulations effective on the same date as the nutrition labeling final rule, the agency points out that the 1990 amendments (in section 10(c)) state that ingredient listing provisions shall take effect 1 year after enactment. Thus, on November 8, 1991, statutory provisions that require the listing of all ingredients in standardized food and the listing of all FDA-certified colorings will be in effect. (The provision requiring the declaration of the total percentage of fruit or vegetable juice in a food purporting to be a beverage containing vegetable or fruit juice will also be in effect. As explained previously in this preamble, a separate proposal addressing fruit or vegetable juice percentage listing requirements will be published soon in a future issue of the **Federal Register**.) The agency expects firms to comply with the statutory requirements. While FDA will not be bound by the provisions of this proposed rule, labels that comply with it would less likely be the subject of enforcement action than labels that do not. All labels ordered after the effective date of final regulations pertaining to section 7 requirements would be expected to be in full compliance with those regulations.

The agency is requesting comments on the proposed effective date for the ingredient labeling regulations. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

XII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Congressional Record—House, July 30, 1990, H5842.

2. FDA Compliance Policy Guide 7127.01.

3. FDA advisory opinion on Grocery Manufacturers of America Petitions (Docket Nos. 77N–0009 and 78P–0164), Joseph P. Hile, to Laurie Burg, January 28, 1983.

4. International Hydrolyzed Protein Council, 1977, comments with additional data by IHPC on SCOGS tentative evaluation of the health aspects of protein hydrolysates as food ingredients—Report 37b, International Hydrolyzed Protein Council, Washington, DC.

5. FDA opinion letter, Daniel D. Jones, GRAS Review Branch, to Charles L. Noland, October 18, 1978.

6. FDA opinion letter, Duane G. Groth, Advisory Opinions Branch, Division of Industry Advice, to Mrs. Betty B. Horn, May 4, 1965.

7. FDA opinion letter, Mary I. Snyder, Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, to Ellen J. Flannery, April 29, 1988.

8. Heath, H. B., and G. Reineccius, "Flavor Chemistry and Technology," Van Nostrand Reinhold Co., Inc., New York, pp. 319–331, 259–261, 1986.

9. Pease, H., "Protein Hydrolysates and Flavor Enhancers," a paper given October 29, 1970, at Columbia University, to the graduate course in food product development, pp. 43.

10. Prendergast, K., "Versatility of Protein Hydrolysates," Food Manufacture, pp. 37, 39, and 57, April 1973.

11. FDA opinion letter, Taylor M. Quinn, Bureau of Foods, to Patrick L. Weidner, July 21, 1978.

12. Maga, J. A. , "Flavor Potentiators," CRC Critical Reviews in Food Science and Nutrition, 18:231, 1983.

13. "The World of Meat Flavours," Food Manufacture, pp. 65–67, 71, September 1982.

14. Dzanic, H., I. Mujic, and V. Sudarski-Hack, "Protein Hydrolysates from Soy Grits and Dehydrated Alfalfa Flour," Journal of Agriculture and Food Chemistry, pp. 683–685, 1985 (33).

15. Hall, L. A., "Protein Hydrolysates as a Source of Glutamate Flavors " from Proceedings of the Symposium of the Quartermaster Food and Container Institute for the Armed Forces, pp. 53–61, March 1948.

16. "MSG Substitute is Cost-Effective," Food Engineering International, pp. 44–45, 1980 (5).

17. Prendergast, H., "Protein Hydrolysate—A Review," Food Trade Review, pp. 14–21, 1974 (44).

18. FDA opinion letter, Taylor M. Quinn, Office of Compliance, Center for Food Safety and Applied Nutrition, to Robert G. Hibbert, December 6, 1984.

19. Bernard, R. J. and Tollefson, L., "Hypersensitivity-Type Reactions Associated with MSG," FDA memorandum, September 18, 1989.

20. Tollefson, L., FDA memorandum, June 8, 1990.

21. Tollefson, L., FDA memorandum, March 12, 1990.

22. U.S. Department of Health and Human Services, Public Health Service, The Surgeon General's Report on Nutrition and Health, 1988, DHHS (PHS) Publication No. 88–50210 (GPO Stock No. 017–001–00465–1, U.S. Government Printing Office, Washington, DC).

23. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Diet and Health, Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.

24. U.S. Department of Agriculture and U.S. Department of Health and Human Services, "Nutrition and Your Health, Dietary Guidelines for Americans," Home and Garden Bulletin, No. 232, U.S. Government Printing Office, Washington, DC, 1985.

25. National Heart, Lung, and Blood Institute, "National Cholesterol Education Program Report of the Expert Panel on Population Strategies for Blood Cholesterol Reduction (Population Panel)," draft, February 2, 1990. I2126. U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, Office of Medical Applications of Research, "Lowering Blood Cholesterol to Prevent Heart Disease," consensus development conference statement, vol. 5, No. 7, National Institutes of Health, Bethesda, MD, 1984.

26a. Weiss, T. J., "Food Oils and Their Uses," the AVI Publishing Co., Inc., Westport, Connecticut, 1970.

27. Tattrie, N. H., and M. Yaguchi, "Protein Content of Various Processed Edible Oils," Canadian Institute of Food Science and Technology Journal, vol. 6, pp. 289–290, 1973.

28. Taylor, S. L., W. W. Busse, M. I. Sachs, J. L. Parker, and J. W. Yunginger, "Peanut Oil is not Allergenic to Peanut-Sensitive Individuals," Journal of Allergy and Clinical Immunology, vol. 68, No. 5, pp. 372–375, 1981.

29. American Academy of Allergy and Immunology Committee on Adverse Reactions to Foods of the National Institute of Allergy and Infectious Diseases; U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, NIH Publication No. 84–2442, July 1984.

30. Woodruff, C. W., "Present Knowledge in Nutrition," The Nutrition Foundation, Inc., Washington, DC, pp. 479–487, 1976.

31. Brostoff, J., and S. J. Challacombe, "Food Allergy and Intolerance," Bailliere Tindall, London, pp. 344–355, 1987.

32. Randolph, T. G., and L. B. Yeager, "Corn Sugar as an Allergen," Annals of Allergy, 7:651–661, 1949.

33. Randolph, T. G., J. P. Rollins, and C. K. Walker, "Allergic Reactions Following the Intravenous Injection of Corn Sugar (Dextrose)," Archives of Surgery, 61:554–564, 1950.

34. Loveless, M. H., "Allergy for Corn and Its Derivatives: Experiments with a Masked Ingestion Test for Its Diagnosis," Journal of Allergy, 21:500–509, 1950.

35. Bernton, H. S., "Food Allergy with Special Reference to Corn and Refined Corn Derivatives " Annals of Internal Medicine, 36:177–185, 1952.

36. Glinsmann, W. H., H. Irausquin, and Y. K. Park, "Report from FDA's Sugars Task Force, 1986: Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners," Journal of Nutrition, vol. 116, No. 11S, supp., p. S108, November 1986.

37. Arthur D. Little, Inc., "Cost of Compliance and Economic Impact of Specific Source Declaration of Fats and Oils in Foods," May 1981.

38. U.S. Department of Agriculture, Economic Research Service, "Sugar and Sweetener Situation and Outlook Report," supp., January 1989.

39. Vuilleumier, Stephen, McKeany-Flavell Co., Inc., "World Outlook for High Fructose Syrups," presented to the 1983 International Sweetener Colloquium, Phoenix, AZ, January 31, 1983.

40. Printings for ingredient label format evaluation.

41. Senate Report No. 1548, June 10, 1960, U.S. Congressional and Administrative News 60–154, pp. 2449–2457.

42. FDA Letter of Denial of American Bakers Association Petition (Docket No. 76P–0285), Joseph P. Hile to Andrew S. Krulwich, Esq., March 18, 1977.

43. Congressional Record—House, July 30, 1990, H 5840.

XIII. Comments

Interested persons may, on or before August 5, 1991, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 101: Food labeling, Reporting and recordkeeping requirements.

Part 130: Food additives, Food grades and standards.

Part 131: Cream, Food grades and standards, Milk, Yogurt.

Part 133: Cheese, Food grades and standards, Food labeling.

Part 135: Food grades and standards, Food labeling, Frozen foods, Ice cream.

Part 136: Bakery products, Food grades and standards.

Part 137: Cereals (food), Food grades and standards.

Part 139: Food grades and standards.

Part 145: Food grades and standards, Fruits.

Part 146: Food grades and standards, Fruit juices.

Part 150: Food grades and standards, Fruits.

Part 152: Bakery products, Food grades and standards, Frozen foods, Fruits.

Part 155: Food grades and standards, Vegetables.

Part 156: Food grades and standards, Vegetable juices.

Part 158: Food grades and standards, Frozen foods, Vegetables.

Part 160: Eggs, Food grades and standards.

Part 161: Food grades and standards, Frozen foods, Seafood.

Part 163: Cacao products, Food grades and standards.

Part 164: Food grades and standards, Nuts, Peanuts.

Part 166: Food grades and standards, Food labeling, Margarine.

Part 168: Food grades and standards, Sugar.

Part 169: Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA hereby withdraws the proposed amendment to § 101.4 (formerly § 1.10) pertaining to the establishment of the terms "sugar" and "corn syrup" as collective ingredient designations that was published in the **Federal Register** of June 14, 1974 (39 FR 20888); terminates the rulemaking proceeding initiated by that proposal; and denies the petitions commenting on that proposal from the Canada Dry Corp. (June 27, 1975—Docket No. 75P–0144), the Canners League of California (January 19, 1977—Docket No. 77P–0051), the Independent Bakers Association (September 22, 1977—Docket No. 77P–0357), the California Milling Corp. (June 19, 1978—Docket No. 77P–0051 CP0002), the Orth Co. (July 31, 1978—Docket No. 77P–0357), L. Karp & Sons, Inc. (August 11, 1978—Docket No. 77P–0357 CP0003), and the National Soft Drink Association (January 20, 1984—Docket No. 84P–0029). FDA proposes that 21 CFR parts 101, 130, 131, 133, 136, 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163, 164, 166, 168, and 169 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.4 is amended by revising paragraph (a)(1), by adding new paragraph (a)(3), by revising paragraph (b)(2)(i), and by adding new paragraphs (b)(21), (b)(22), (b)(25), (d), (e), and (f) to read as follows:

§ 101.4 Food; designation of ingredients.

(a)(1) Ingredients required to be declared on the label or labeling of a food, including foods that comply with standards of identity, except those ingredients exempted by § 101.100, shall be listed by common or usual name in descending order of predominance by weight on either the principal display panel or the information panel in accordance with the provisions of § 101.2.

* * * * *

(3) The listing of ingredients required by paragraph (a)(1) of this section shall be preceded by a statement explaining that the ingredients are listed in descending order of predominance by weight, for example, "Ingredients (in descending order of predominance by weight): ____, ____, and ____."

(b) * * *

(2) * * *

(i) By declaring the established common or usual name of the ingredient followed by a parenthetical listing of all ingredients contained therein in descending order of predominance except that, if the ingredient is a food subject to a definition and standard of identity established in subchapter B of this chapter that has specific labeling provisions for optional ingredients, optional ingredients may be declared within the parenthetical listing in accordance with those provisions.

* * * * *

(21) When more than one sweetener is used in a product, ingredients that serve a sweetening function in a food shall be declared in the ingredient statement by stating the specific common or usual name of each individual ingredient in a parenthetical list following the term "sweeteners." The list of the individual sweetening ingredients in parentheses shall be in descending order of predominance by weight. The collective listing of the sweetener ingredients shall be placed in the ingredient statement based on the total weight of all sweetener ingredients. For purposes of this paragraph, the following ingredients shall be deemed to serve a sweetening function:

(i) All standardized sweeteners and table syrups provided for in part 168 of this chapter.

(ii) All sweeteners that the Food and Drug Administration has affirmed as generally recognized as safe (GRAS) or approved for use as a food additive (including, but not limited to, sugar (21 CFR 184.1854), high fructose corn syrup (21 CFR 182.1866), sugar alcohols, aspartame (21 CFR 172.804), malt syrup (21 CFR 184.1445), and saccharin (21 CFR 180.37)).

(iii) All sweeteners eligible for classification as GRAS in accordance with the provisions of 21 CFR 170.30(f) that are of natural biological origin (including, but not limited to, fructose, maltose, honey, and fruit syrups other than those provided for in part 168, concentrated fruit juices (except where water is added to return the concentrate to its single-strength concentration), and concentrated modified fruit juices).

(iv) All sweeteners that are used in accordance with a sanction or approval granted prior to September 6, 1958.

(22) For purposes of ingredient labeling, the term "sugar" shall refer to sucrose, which is refined from sugar cane or sugar beets in accordance with the provisions of § 184.1854 of this chapter.

* * * * *

(25) Wax and resin ingredients on fresh produce shall be declared in the ingredient statement individually by their common or usual names: Except that when such produce is held for retail sale, or when held for other than retail sale and packers or repackers are unable to adhere to a constant pattern of wax or resin ingredients on the produce, these ingredients may be declared collectively by the phrase "coated with food-grade animal-based wax" or the phrase "coated with food-grade vegetable-, mineral-, beeswax-, and/or shellac-based wax or resin," as appropriate. The term "food-grade" is optional. The term "lac-resin" may be substituted for the term "shellac".

* * * * *

(d) When foods characterized on the label as "nondairy" contain a caseinate ingredient, the caseinate ingredient shall be followed by a parenthetical statement identifying its source. For example, if the manufacturer uses the term "non-dairy" on a creamer that contains sodium caseinate, it shall include a parenthetical term such as "a milk derivative" after the listing of sodium caseinate in the ingredient list.

(e) If the percentage of an ingredient is included in the statement of ingredients, it shall be shown in parentheses following the name of the ingredient and expressed in terms of percent by weight. Percentage declarations shall be expressed to the nearest 1 percent, except that where ingredients are present at levels of 2 percent or less, they may be grouped together and expressed in accordance with the quantifying guidance set forth in paragraph (a)(2) of this section.

(f) Except as provided in § 101.100, ingredients that must be declared on labeling because there is no label for the food, including foods that comply with standards of identity, shall be listed prominently and conspicuously by common or usual name in the manner prescribed by paragraph (b) of this section.

§ 101.6 [Removed]

3. Section 101.6 *Label designation of ingredients for standardized foods* is removed.

4. Section 101.22 is amended by adding new paragraphs (h)(7) and (k) to read as follows:

§ 101.22 Foods; labeling of spices, flavorings, colorings and chemical preservatives.

* * * * *

(h) * * *

(7) Because protein hydrolysates function in foods as both flavorings and flavor enhancers, no protein hydrolysate used in food for its effects on flavor may be declared simply as "flavor" or "flavoring." The ingredient shall be declared by a common or usual name that is specific to the ingredient and that identifies the food source from which the protein was derived. "Hydrolyzed casein" is an example of an acceptable name, whereas: "hydrolyzed milk protein" is not an acceptable name for this ingredient because it is not specific to the ingredient (hydrolysates can be prepared from other milk proteins). "Hydrolyzed wheat gluten," "hydrolyzed soy protein," and "autolyzed yeast extract" are also examples of acceptable names. The names "hydrolyzed vegetable protein" and "hydrolyzed protein" are not acceptable because they do not identify the food source of the protein.

* * * * *

(k) The label of a food to which any coloring has been added shall declare the coloring in the statement of ingredients in the manner specified in paragraphs (k)(1) and (k)(2) of this section, except that colorings added to butter, cheese, and ice cream shall be declared in the manner specified in paragraph (k)(3) of this section, and colorings added to foods subject to §§ 105.62 and 105.65 of this chapter shall be declared in accordance with the requirements of those sections.

(1) A color additive subject to certification under 21 U.S.C. 376(c) shall be declared by the name of the color additive listed in the applicable regulation in part 74 or part 82 of this chapter, except that it is not necessary to include the "FD&C" prefix in the declaration.

(2) Color additives not subject to certification may be declared as "Artificial Color", "Artificial Color

Added", or "Color Added" (or an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as "Colored with ____" or "____ (color)", the blank to be filled with the name of the color additive listed in the applicable regulation in part 73 of this chapter.

(3) When a coloring has been added to butter, cheese, or ice cream, it need not be declared in the ingredient list unless such declaration is required by a regulation in part 73 or part 74 of this chapter to assure safe conditions of use for the color additive. Voluntary declaration of all colorings added to butter, cheese, and ice cream, however, is recommended.

§ 101.35 [Removed]

5. Section 101.35 *Notice to manufacturers and users of monosodium glutamate and other hydrolyzed vegetable protein products* is removed.

6. Section 101.100 is amended by revising paragraph (a)(2) to read as follows:

§ 101.100 Food; exemptions from labeling.

(a) * * *

(2) A food having been received in bulk containers at a retail establishment, if displayed to the purchaser with either:

(i) The labeling of the bulk container plainly in view, provided ingredient information appears prominently and conspicuously in lettering of not less than one-fourth inch in height; or

(ii) A counter card, sign, or other appropriate device bearing prominently and conspicuously, but in no case with lettering of less than one-fourth inch in height, the information required to be stated on the label pursuant to section 403(i)(2) of the act.

* * * * *

PART 130—FOOD STANDARDS: GENERAL

7. The authority citation for 21 CFR part 130 continues to read as follows:

Authority: Secs. 201, 306, 401, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 341, 343, 371).

8. Section 130.3 is amended by adding new paragraph (e) to read as follows:

§ 130.3 Definitions and interpretations.

* * * * *

(e) Section 403(i) of the act requires the listing of all ingredients in standardized foods. All ingredients must be listed in accordance with the requirements of part 101 of this chapter, except that where a definition and standard of identity has specific labeling provisions for optional ingredients, optional ingredients may be declared in accordance with those provisions.

8a. New § 130.9 is added to subpart A to read as follows:

§ 130.9 Sulfites in standardized food.

(a) Any standardized food that contains a sulfiting agent or combination of sulfiting agents that is functional and provided for in the applicable standard or that is present in the finished food at a detectable level is misbranded unless the presence of the sulfiting agent or agents is declared on the label of the food. A detectable amount of sulfiting agent is 10 parts per million or more of the sulfite in the finished food. The level of sulfite in the finished food will be determined using §§ 20.123 through 20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and the refinements of the "Total Sulfurous Acid" procedure in the "Monier-Williams Procedure (with Modifications) for Sulfites in Foods," which is appendix A to part 101 of this chapter. A copy of §§ 20.123 through 20.125 of the "Official Methods of Analysis of the Association of Official Analytical Chemists" is available from the Association of Analytical Chemists, 1111 North 19th St., suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(b) Any standardized food that, as a result of actions that are consistent with current good manufacturing practice, contains an indirectly added sulfiting agent that has no functional effect in the food and that would, in the absence of § 101.100(a)(4) of this chapter, be considered to be an incidental additive for purposes of § 130.8, conforms to the applicable definition and standard of identity if the presence of the sulfiting agent is declared on the label of the food.

PART 131—MILK AND CREAM

9. The authority citation for 21 CFR part 131 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

10. Section 131.110 is amended by revising paragraph (f) to read as follows:

§ 131.110 Milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

11. Section 131.111 is amended by revising paragraph (h) to read as follows:

§ 131.111 Acidified milk.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

12. Section 131.112 is amended by revising paragraph (g) to read as follows:

§ 131.112 Cultured milk.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

13. Section 131.115 is amended by revising paragraph (f) to read as follows:

§ 131.115 Concentrated milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

14. Section 131.120 is amended by revising paragraph (e) to read as follows:

§ 131.120 Sweetened condensed milk.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

15. Section 131.122 is amended by revising paragraph (e) to read as follows:

§ 131.122 Sweetened condensed skimmed milk.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

16. Section 131.123 is amended by revising paragraph (f) to read as follows:

§ 131.123 Lowfat dry milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

17. Section 131.125 is amended by revising paragraph (e) to read as follows:

§ 131.125 Nonfat dry milk.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

18. Section 131.127 is amended by revising paragraph (f) to read as follows:

§ 131.127 Nonfat dry milk fortified with vitamins A and D.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

19. Section 131.130 is amended by revising paragraph (f) to read as follows:

§ 131.130 Evaporated milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

20. Section 131.132 is amended by revising paragraph (f) to read as follows:

§ 131.132 Evaporated skimmed milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

21. Section 131.135 is amended by revising paragraph (f) to read as follows:

§ 131.135 Lowfat milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

22. Section 131.136 is amended by revising paragraph (h) to read as follows:

§ 131.136 Acidified lowfat milk.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

23. Section 131.138 is amended by revising paragraph (g) to read as follows:

§ 131.138 Cultured lowfat milk.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

24. Section 131.143 is amended by revising paragraph (f) to read as follows:

§ 131.143 Skim milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

25. Section 131.144 is amended by revising paragraph (h) to read as follows:

§ 131.144 Acidified skim milk.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

26. Section 131.146 is amended by revising paragraph (g) to read as follows:

§ 131.146 Cultured skim milk.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

27. Section 131.147 is amended by revising paragraph (f) to read as follows:

§ 131.147 Dry whole milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

28. Section 131.149 is amended by revising paragraph (e) to read as follows:

§ 131.149 Dry cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

29. Section 131.150 is amended by revising paragraph (e) to read as follows:

§ 131.150 Heavy cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

30. Section 131.155 is amended by revising paragraph (e) to read as follows:

§ 131.155 Light cream

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

31. Section 131.157 is amended by revising paragraph (e) to read as follows:

§ 131.157 Light whipping cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

32. Section 131.160 is amended by revising paragraph (e) to read as follows:

§ 131.160 Sour cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

33. Section 131.162 is amended by revising paragraph (e) to read as follows:

§ 131.162 Acidified sour cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

34. Section 131.170 is amended by revising paragraph (h) to read as follows:

§ 131.170 Eggnog.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

35. Section 131.180 is amended by revising paragraph (e) to read as follows:

§ 131.180 Half-and-half.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

36. Section 131.185 is amended by revising paragraph (e) to read as follows:

§ 131.185 Sour half-and-half.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

37. Section 131.187 is amended by revising paragraph (e) to read as follows:

§ 131.187 Acidified sour half-and-half.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

38. Section 131.200 is amended by revising paragraph (g) to read as follows:

§ 131.200 Yogurt.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

39. Section 131.203 is amended by revising paragraph (g) to read as follows:

§ 131.203 Lowfat yogurt.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

40. Section 131.206 is amended by revising paragraph (g) to read as follows:

§ 131.206 Nonfat yogurt.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

41. The authority citation for 21 CFR part 133 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

42. Section 133.102 is amended by revising paragraph (e) to read as follows:

§ 133.102 Asiago fresh and asiago soft cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as"enzymes".

43. Section 133.103 is revised to read as follows:

§ 133.103 Asiago medium cheese.

Asiago medium cheese conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed by § 133.102 for asiago fresh cheese, except that it contains not more than 35 percent moisture, its solids contain not less than 45 percent of milkfat, and it is cured for not less than 6 months.

44. Section 133.104 is revised to read as follows:

§ 133.104 Asiago old cheese.

Asiago old cheese conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed by § 133.102 for asiago fresh cheese, except that it contains not more than 32 percent moisture, its solids contain not less than 42 percent of milk fat, and it iscured for not less than 1 year.

45. Section 133.106 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.106 Blue cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

46. Section 133.108 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.108 Brick cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

47. Section 133.111 is amended by revising paragraph (f) to read as follows:

§ 133.111 Caciocavallo siciliano cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as"enzymes".

48. Section 133.113 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.113 Cheddar cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

49. Section 133.118 is amended by adding new paragraph (f) to read as follows:

§ 133.118 Colby cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as"enzymes".

50. Section 133.121 is amended by revising the introductory text to read as follows:

§ 133.121 Low sodium colby cheese.

Low sodium colby cheese is the food prepared from the same ingredients and in the same manner prescribed in § 133.118 for colby cheese and complies with all the provisions of § 133.118, including the requirements for label statement of ingredients, except that:

* * * * *

51. Section 133.123 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.123 Cold-pack and club cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

52. Section 133.124 is amended by revising paragraph (h) to read as follows:

§ 133.124 Cold-pack cheese food.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these, may be designated as "American cheese".

53. Section 133.125 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.125 Cold-pack cheese food with fruits, vegetables, or meats.

(a) Cold-pack cheese food with fruits, vegetables, or meats or mixtures of these is the food which conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, prescribed for cold pack cheese food by § 133.124, except that:

* * * * *

54. Section 133.127 is amended by revising paragraph (d) to read as follows:

§ 133.127 Cook cheese, koch kaese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

55. Section 133.128 is amended by revising paragraph (e) to read as follows:

§ 133.128 Cottage cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that milk-clotting enzymes may be declared by the word "enzymes".

56. Section 133.129 is amended by revising paragraph (e) to read as follows:

§ 133.129 Dry curd cottage cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that milk-clotting enzymes may be declared by the word "enzymes".

57. Section 133.131 is amended by revising the introductory text to read as follows:

§ 133.131 Lowfat cottage cheese.

Lowfat cottage cheese is the food prepared from the same ingredients and in the same manner prescribed in § 133.128 for cottage cheese and complies with all the provisions of § 133.128 (including requirements for the label statement of ingredients), except that:

* * * * *

58. Section 133.133 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.133 Cream cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

59. Section 133.134 is amended by revising the introductory text paragraph (d) to read as follows:

§ 133.134 Cream cheese with other foods.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

60. Section 133.136 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

61. Section 133.138 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.138 Edam cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

62. Section 133.140 is amended by revising paragraph (c) to read as follows:

§ 133.140 Gammelost cheese.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

63. Section 133.141 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.141 Gorgonzola cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

64. Section 133.144 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.144 Granular and stirred curd cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

65. Section 133.146 is amended by revising the introductory text of paragraph (e) to read as follows:

§ 133.146 Grated cheeses.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

66. Section 133.147 is amended by revising paragraph (e) to read as follows:

§ 133.147 Grated American cheese food.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated "American cheese".

67. Section 133.148 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.148 Hard grating cheeses.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

68. Section 133.149 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.149 Gruyere cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

69. Section 133.150 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.150 Hard cheeses.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be

declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

70. Section 133.152 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.152 Limburger cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

71. Section 133.153 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

72. Section 133.154 is revised to read as follows:

§ 133.154 High-moisture jack cheese.

High-moisture jack cheese conforms to the definition and standard of identity and is subject to the requirement for label statement of ingredients prescribed for monterey cheese by § 133.153, except that its moisture content is more than 44 percent but less than 50 percent.

73. Section 133.155 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.155 Mozzarella cheese and scamorza cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

74. Section 133.156 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.156 Low-moisture mozzarella and scamorza cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

75. Section 133.158 is revised to read as follows:

§ 133.158 Low-moisture part-skim mozzarella and scamorza cheese.

Low-moisture part-skim mozzarella cheese and low-moisture part-skim scamorza cheese conform to the definition and standard of identity and comply with the requirements for label declaration of ingredients prescribed for low-moisture mozzarella cheese and low-moisture scamorza cheese by § 133.156, except that their milkfat content, calculated on the solids basis, is less than 45 percent but not less than 30 percent.

76. Section 133.160 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.160 Muenster and munster cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

77. Section 133.162 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.162 Neufchatel cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

78. Section 133.164 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.164 Nuworld cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

79. Section 133.165 is amended by revising paragraph (e) to read as follows:

§ 133.165 Parmesan and reggiano cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

80. Section 133.167 is amended by revising the introductory text to read as follows:

§ 133.167 Pasteurized blended cheese.

Pasteurized blended cheese conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese by § 133.169, except that:

* * * * *

81. Section 133.168 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.168 Pasteurized blended cheese with fruits, vegetables, or meats.

(a) Pasteurized blended cheese with fruits, vegetables, or meats or mixtures of these is the food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized blended cheese by § 133.167, except that:

* * * * *

82. Section 133.169 is amended by revising paragraph (g) to read as follows:

§ 133.169 Pasteurized process cheese.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated as "American cheese".

83. Section 133.170 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.170 Pasteurized process cheese with fruits, vegetables, or meats.

(a) Unless a definition and standard of identity specifically applicable is established by another section of this part a pasteurized process cheese with fruits, vegetables, or meats or mixtures of these is a food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese by § 133.169, except that:

* * * * *

84. Section 133.171 is amended by revising the introductory text to read as follows:

§ 133.171 Pasteurized process pimento cheese.

Pasteurized process pimento cheese is the food which conforms to the definition and standard of identity for pasteurized process cheese with fruits, vegetables, or meats, and is subject to

the requirement for label statement of ingredients, except that:

* * * * *

85. Section 133.173 is amended by revising paragraph (h) to read as follows:

§ 133.173 Pasteurized process cheese food.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated as "American cheese".

86. Section 133.174 ls amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.174 Pasteurized process cheese food with fruits, vegetables, or meats.

(a) Pasteurized process cheese food with fruits, vegetables, or meats or mixtures of these is the food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese food by § 133.173, except that:

* * * * *

87. Section 133.175 is revised to read as follows:

§ 133.175 Pasteurized cheese spread.

Pasteurized cheese spread is the food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese spread by § 133.179, except that no emulsifying agent as prescribed by § 133.179(e) is used.

88. Section 133.176 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.176 Pasteurized cheese spread with fruits, vegetables, or meats.

(a) Pasteurized cheese spread with fruits, vegetables, or meats or mixtures of these is a food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized cheese spread by § 133.175, except that:

* * * * *

89. Section 133.178 is amended by revising paragraph (d) to read as follows:

§ 133.178 Pasteurized neufchatel cheese spread with other foods.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

90. Section 133.179 is amended by revising paragraph (i) to read as follows:

§ 133.179 Pasteurized process cheese spread.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated as "American cheese".

91. Section 133.180 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.180 Pasteurized process cheese spread with fruits, vegetables, or meats.

(a) Pasteurized process cheese spread with fruits, vegetables, or meats or mixtures of these is a food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese spread by § 133.179, except that:

* * * * *

92. Section 133.181 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.181 Provolone cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

93. Section 133.182 is amended by adding paragraph (f) to read as follows:

§ 133.182 Soft ripened cheeses.

* * * * *

(f) Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

94. Section 133.183 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.183 Romano cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

95. Section 133.184 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

96. Section 133.185 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.185 Samsoe cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

97. Section 133.186 is amended by revising paragraph (d) to read as follows:

§ 133.186 Sap sago cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

98. Section 133.187 is amended by adding new paragraph (g) to read as follows:

§ 133.187 Semisoft cheeses.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

99. Section 133.188 is amended by adding new paragraph (g) to read as follows:

§ 133.188 Semisoft part-skim cheeses.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

100. Section 133.189 is amended by adding new paragraph (e) to read as follows:

§ 133.189 Skim milk cheese for manufacturing.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the

applicable sections of parts 101 and 130 of this chapter.

101. Section 133.190 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.190 Spiced cheeses.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter except that:

* * * * *

102. Section 133.191 is revised to read as follows:

§ 133.191 Part-skim spiced cheeses.

Part-skim spiced cheeses conform to the definition and standard of identity, and are subject to the requirements for label statement of ingredients prescribed for spiced cheeses by § 133.190, except that their solids contain less than 50 percent, but not less than 20 percent, of milkfat.

103. Section 133.193 is amended by revising paragraph (a) to read as follows:

§ 133.193 Spiced, flavored standardized cheeses.

(a) Except as otherwise provided for herein and in applicable sections in this part, a spiced or flavored standardized cheese conforms to the applicable definitions, standard of identity and requirements for label statement of ingredients prescribed for that specific natural cheese variety promulgated pursuant to section 401 of the act. In addition a spiced and/or flavored standardized cheese shall contain one or more safe and suitable spices and/or flavorings, in such proportions as are reasonably required to accomplish their intended effect: *Provided,* That, no combination of ingredients shall be used to simulate the flavor of cheese of any age or variety.

* * * * *

104. Section 133.195 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.195 Swiss and emmentaler cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

PART 135—FROZEN DESSERTS

105. The authority citation for 21 CFR Part 135 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

106. Section 135.110 is amended by revising paragraph (f) to read as follows:

§ 135.110 Ice cream and frozen custard.

* * * * *

(f) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that the sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of all the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in § 101.4 (b)(3), (b)(4), (b)(8), and (b)(9) of this chapter are used or alternatively as permitted in § 101.4 of this chapter. Under section 403(k) of the Federal Food, Drug, and Cosmetic Act, artificial color need not be declared in ice cream, except as required by § 101.22 (c) or (k) of this chapter. Voluntary declaration of all colors used in ice cream and frozen custard is recommended.

107. Section 135.115 is amended by revising paragraph (d) to read as follows:

§ 135.115 Goat's milk ice cream.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

108. Section 135.120 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 135.120 Ice milk.

(a) *Description.* Ice milk is the food prepared from the same ingredients and in the same manner prescribed in § 135.110 for ice cream and complies with all the provisions of § 135.110 (including the requirements for label statement of ingredients), except that:

* * * * *

109. Section 135.130 is amended by revising paragraph (e) to read as follows:

§ 135.130 Mellorine.

* * * * *

(e) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in § 101.4 (b)(3), (b)(4), (b)(8), and (b)(9) of this chapter are used, or alternatively as permitted in § 101.4 of this chapter.

110. Section 135.140 is amended by revising paragraph (i) to read as follows:

§ 135.140 Sherbet.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

111. Section 135.160 is amended by revising paragraph (a) to read as follows:

§ 135.160 Water ices.

(a) *Description.* Water ices are the foods each of which is prepared from the same ingredients and in the same manner prescribed in § 135.140 for sherbets, except that the mix need not be pasteurized, and complies with all the provisions of § 135.140 (including the requirements for label statement of ingredients), except that no milk or milk-derived ingredient and no egg ingredient, other than egg white, is used.

* * * * *

PART 136—BAKERY PRODUCTS

112. The authority citation for 21 CFR Part 136 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

113. Section 136.110 is amended by revising paragraph (f) to read as follows:

§ 136.110 Breads, rolls, and buns.

* * * * *

(f) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

114. The authority citation for 21 CFR Part 137 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

115. Section 137.105 is amended by revising paragraph (b)(1) to read as follows:

§ 137.105 Flour.

* * * * *

(b)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the

applicable sections of parts 101 and 130 of this chapter.

* * * * *

116. Section 137.155 is revised to read as follows:

§ 137.155 Bromated flour.

Bromated flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for flour by § 137.105, except that potassium bromate is added in a quantity not exceeding 50 parts to each million parts of the finished bromated flour, and is added only to flours whose baking qualities are improved by such addition.

117. Section 137.160 is revised to read as follows:

§ 137.160 Enriched bromated flour.

Enriched bromated flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for enriched flour by § 137.165, except that potassium bromate is added in a quantity not exceeding 50 parts to each million parts of the finished enriched bromated flour, and is added only to enriched flours whose baking qualities are improved by such addition.

118. Section 137.165 is amended by revising the introductory text to read as follows:

§ 137.165 Enriched flour.

Enriched flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for flour by § 137.105, except that:

* * * * *

119. Section 137.170 is amended by revising paragraph (a) to read as follows:

§ 137.170 Instantized flours.

(a) Instantized flours, instant blending flours, and quick-mixing flours, are the foods each of which conforms to the definition and standard of identity and is subject to the requirement for label statement of ingredients prescribed for the corresponding kind of flour by §§ 137.105, 137.155, 137.160, 137.165, 137.175, 137.180, and 137.185, except that each such flour has been made by one of the optional procedures set forth in paragraph (b) of this section, and is thereby made readily pourable. Such flours will all pass through a No. 20 mesh U.S. standard sieve (840-micron opening), and not more than 20 percent will pass through a 200 mesh U.S. standard sieve (74-micron opening).

* * * * *

120. Section 137.175 is amended by revising the introductory text to read as follows:

§ 137.175 Phosphated flour.

Phosphated flour, phosphated white flour, and phosphated wheat flour, conform to the definition and standard of identity, and are subject to the requirements for label declaration of ingredients, prescribed for flour by § 137.105, except that:

* * * * *

121. Section 137.180 is amended by revising paragraph (b) to read as follows:

§ 137.180 Self-rising flour.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food, shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

122. Section 137.185 is amended by revising the introductory text to read as follows:

§ 137.185 Enriched self-rising flour.

Enriched self rising flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for self-rising flour by § 137.180, except that:

* * * * *

123. Section 137.200 is amended by revising paragraph (b)(1) to read as follows:

§ 137.200 Whole wheat flour.

* * * * *

(b)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

124. Section 137.205 is revised to read as follows:

§ 137.205 Bromated whole wheat flour.

Bromated whole wheat flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for whole wheat flour by § 137.200, except that potassium bromate is added in a quantity not exceeding 75 parts to each million parts of finished bromated whole wheat flour.

125. Section 137.225 is revised to read as follows:

§ 137.225 Whole durum flour.

Whole durum wheat flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for whole wheat flour by § 137.200, except that cleaned durum wheat, instead of cleaned wheat other than durum wheat and red durum wheat, is used in its preparation.

126. Section 137.235 is amended by adding new paragraph (c) to read as follows:

§ 137.235 Enriched corn grits.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

127. Section 137.260 is amended by adding new paragraph (c) to read as follows:

§ 137.260 Enriched corn meals.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

128. Section 137.270 is amended by adding new paragraph (c) to read as follows:

§ 137.270 Self-rising white corn meal.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

129. Section 137.305 is amended by revising paragraph (b)(1) to read as follows:

§ 137.305 Enriched farina.

* * * * *

(b)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

130. Section 137.350 is amended by adding new paragraph (g) to read as follows:

§ 137.350 Enriched rice.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

131. The authority citation for 21 CFR Part 139 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

132. Section 139.110 is amended by adding new paragraph (g) to read as follows:

§ 139.110 Macaroni products.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

133. Section 139.115 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.115 Enriched macaroni products.

(a) *Description.* Enriched macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f), and (g), except that:

* * * * *

134. Section 139.117 is amended by revising paragraph (e) to read as follows:

§ 139.117 Enriched macaroni products with fortified protein.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

135. Section 139.120 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.120 Milk macaroni products.

(a) Milk macaroni products are the class of food, each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

136. Section 139.121 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.121 Nonfat milk macaroni products.

(a) Each of the macaroni products made with nonfat milk for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), (f)(4), and (g), except that:

* * * * *

137. Section 139.122 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.122 Enriched nonfat milk macaroni products.

(a) Each of the enriched macaroni products made with nonfat milk for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), (f)(4), and (g), except that:

* * * * *

138. Section 139.125 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.125 Vegetable macaroni products.

(a) Vegetable macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

139. Section 139.135 is amended by revising paragraph (a) to read as follows:

§ 139.135 Enriched vegetable macaroni products.

(a) Each of the macaroni products for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for macaroni products by § 139.110 (a), (f), and (g), and in addition is enriched to meet the requirements prescribed for enriched macaroni products by § 139.115 and contains a vegetable ingredient in compliance with the requirements prescribed for vegetable macaroni products by § 139.125.

* * * * *

140. Section 139.138 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.138 Whole wheat macaroni products.

(a) Whole wheat macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

141. Section 139.140 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.140 Wheat and soy macaroni products.

(a) Wheat and soy macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

142. Section 139.150 is amended by adding new paragraph (i) to read as follows:

§ 139.150 Noodle products.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

143. Section 139.155 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.155 Enriched noodle products.

(a) Enriched noodle products are the class of food each of which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for noodle products by § 139.150 (a), (g), and (i), except that:

* * * * *

144. Section 139.160 is amended by revising paragraph (a) to read as follows:

§ 139.160 Vegetable noodle products.

(a) Vegetable noodle products are the class of food each of which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for noodle products by § 139.150 (a), (g), and (i), except that tomato (of any red variety), artichoke, beet, carrot, parsley, or spinach is added in such quantity that the solids thereof are not less than 3 percent by weight of the finished vegetable noodle product (the vegetable used may be fresh, canned, dried, or in the form of puree or paste).

* * * * *

145. Section 139.165 is amended by revising paragraph (a) to read as follows:

§ 139.165 Enriched vegetable noodle products.

(a) Each of the noodle products for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity and is subject to the requirements for label declaration of ingredients prescribed for noodle products by § 139.150 (a), (g), (h), and (i), and in addition is enriched to meet the requirements prescribed for enriched noodle products by § 139.155 and, except as hereinafter provided, contains a vegetable ingredient in compliance with the requirements prescribed for vegetable noodle products by § 139.160. Because they are apt to impart an egg-yolk color, carrots are not used in enriched vegetable noodle products.

* * * * *

146. Section 139.180 is amended by revising paragraph (a) to read as follows:

§ 139.180 Wheat and soy noodle products.

(a) Wheat and soy noodle products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for noodle products by § 139.150 (a), (g), and (i), except that soy flour is added in a quantity not less than 12.5 percent of the combined weight of the wheat and soy ingredients used (the soy flour used is made from heat-processed, dehulled soybeans, with or without the removal of fat therefrom).

* * * * *

PART 145—CANNED FRUITS

147. The authority citation for 21 CFR Part 145 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

148. Section 145.110 is amended by revising paragraph (a)(4) to read as follows:

§ 145.110 Canned applesauce.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. However, when ascorbic acid (vitamin C) is added as provided for in paragraph (a)(2)(viii)(*b*) of this section, after the application of heat to the apples, preservative labeling requirements do not apply.

* * * * *

149. Section 145.115 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.115 Canned apricots.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

150. Section 145.116 is amended by revising paragraph (b)(2) to read as follows:

§ 145.116 Artificially sweetened canned apricots.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned apricots by § 145.115(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

151. Section 145.120 is amended by revising paragraph (a)(5)(iv) to read as follows:

§ 145.120 Canned berries.

(a) * * *

(5) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

152. Section 145.125 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.125 Canned cherries.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

153. Section 145.126 is amended by revising paragraph (b)(2) to read as follows:

§ 145.126 Artificially sweetened canned cherries.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned cherries by § 145.125(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

154. Section 145.130 is amended by revising paragraph (d)(4) to read as follows:

§ 145.130 Canned figs.

* * * * *

(d) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

155. Section 145.131 is amended by revising paragraph (b)(2) to read as follows:

§ 145.131 Artificially sweetened canned figs.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned figs by § 145.130. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

156. Section 145.134 is amended by adding new paragraph (f) to read as follows:

§ 145.134 Canned preserved figs.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

157. Section 145.135 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.135 Canned fruit cocktail.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

158. Section 145.136 is amended by revising paragraph (b)(2) to read as follows:

§ 145.136 Artificially sweetened canned fruit cocktail.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label

statement of ingredients used, as prescribed for canned fruit cocktail by § 145.135(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

159. Section 145.140 is amended by revising paragraph (d)(4) to read as follows:

§ 145.140 Canned seedless grapes.

* * * * *

(d) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

160. Section 145.145 is amended by revising paragraph (a)(4)(iii) to read as follows:

§ 145.145 Canned grapefruit.

(a) * * *

(4) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

161. Section 145.170 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.170 Canned peaches.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

162. Section 145.171 is amended by revising paragraph (b)(2) to read as follows:

§ 145.171 Artificially sweetened canned peaches.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned peaches by § 145.170(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

163. Section 145.175 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.175 Canned pears.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

164. Section 145.176 is amended by revising paragraph (b)(2) to read as follows:

§ 145.176 Artificially sweetened canned pears.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned pears by § 145.175(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

165. Section 145.180 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 145.180 Canned pineapple.

(a) * * *

(5) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

166. Section 145.181 is amended by revising paragraph (b)(2) to read as follows:

§ 145.181 Artificially sweetened canned pineapple.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned pineapple by § 145.180(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin".

167. Section 145.185 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.185 Canned plums.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

168. Section 145.190 is amended by revising paragraph (c)(4) to read as follows:

§ 145.190 Canned prunes.

* * * * *

(c) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 146—CANNED FRUIT JUICES

169. The authority citation for 21 CFR part 146 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

170. Section 146.113 is amended by adding new paragraph (h) to read as follows:

§ 146.113 Canned fruit nectars.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

171. Section 146.114 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 146.114 Lemon juice.

(a) * * *

(3) * * *

(ii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

172. Section 146.120 is amended by revising paragraph (c) to read as follows:

§ 146.120 Frozen concentrate for lemonade.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

173. Section 146.121 is amended by adding new paragraph (f) to read as follows:

§ 146.121 Frozen concentrate for artificially sweetened lemonade.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the

applicable sections of parts 101 and 130 of this chapter.

174. Section 146.126 is amended by revising paragraph (c) to read as follows:

§ 146.126 Frozen concentrate for colored lemonade.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

175. Section 146.132 is amended by revising paragraphs (a)(3)(iii) to read as follows:

§ 146.132 Grapefruit juice.

(a) * * *

(3) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

176. Section 146.140 is amended by adding new paragraph (g) to read as follows:

§ 146.140 Pasteurized orange juice.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

177. Section 146.141 is amended by adding new paragraph (f) to read as follows:

§ 146.141 Canned orange juice.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

178. Section 146.145 is amended by adding new paragraph (f) to read as follows:

§ 146.145 Orange juice from concentrate.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

179. Section 146.146 is amended by adding new paragraph (g) to read as follows:

§ 146.146 Frozen concentrated orange juice.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

180. Section 146.148 is amended by revising paragraph (a) to read as follows:

§ 146.148 Reduced acid frozen concentrated orange juice.

(a) Reduced acid frozen concentrated orange juice is the food that complies with the requirements for composition and label declaration of ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it may not contain any added sweetening ingredient. A process involving the use of anionic ion-exchange resins permitted by § 173.25 of this chapter is used to reduce the acidity of the food so that the ratio of the Brix reading to the grams of acid, expressed as anhydrous citric acid, per 100 grams of juice is not less than 21 to 1 or more than 26 to 1.

* * * * *

181. Section 146.150 is amended by revising paragraph (a) to read as follows:

§ 146.150 Canned concentrated orange juice.

(a) Canned concentrated orange juice is the food that complies with the requirements of composition, definition of dilution ratio, and labeling of ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it is not frozen and it is sealed in containers and so processed by heat, either before or after sealing, so as to prevent spoilage.

* * * * *

182. Section 146.152 is amended by revising paragraph (d) to read as follows:

§ 146.152 Orange juice with preservative.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. In addition, the name of each preservative shall be proceeded by a statement of the percent by weight of the preservative used. If the food is packed in container sizes that are less than 19 liters (5 gallons), the label shall bear a statement indicating that the food is for further manufacturing use only.

* * * * *

183. Section 146.153 is amended by revising paragraph (a) to read as follows:

§ 146.153 Concentrated orange juice for manufacturing.

(a) Concentrated orange juice for manufacturing is the food that complies with the requirements of composition and label declaration of ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it is either not frozen or is less concentrated, or both, and the oranges from which the juice is obtained may deviate from the standards for maturity in that they are below the minimum Brix and Brix-acid ratio for such oranges: *Provided, however,* That the concentration of orange juice soluble solids is not less than 20° Brix.

* * * * *

184. Section 146.154 is amended by revising paragraph (d) to read as follows:

§ 146.154 Concentrated orange juice with preservative.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. In addition, the name of each preservative shall be preceeded by a statement of the percent by weight of the preservative used. If the food is packed in container sizes that are less than 19 liters (5 gallons), the label shall bear a statement indicating that the food is for further manufacturing use only.

* * * * *

185. Section 146.185 is amended by revising paragraph (a)(3) to read as follows:

§ 146.185 Pineapple juice.

(a) * * *

(3) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

186. Section 146.187 is amended by adding new paragraph (d) to read as follows:

§ 146.187 Canned prune juice.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

187. The authority citation for 21 CFR part 150 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

188. Section 150.110 is amended by revising the introductory text of

paragraph (e)(1) and by removing paragraph (e)(2)(ii) and reserving it, to read as follows:

§ 150.110 Fruit butter.

* * * * *

(e)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

(e)(2)(ii) [Reserved]

189. Section 150.140 is amended by revising the introductory text of paragraph (e)(2) to read as follows:

§ 150.140 Fruit jelly.

* * * * *

(e)(2) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

190. Section 150.141 is amended by adding new paragraph (h) to read as follows:

§ 150.141 Artificially sweetened fruit jelly.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

191. Section 150.160 is amended by revising the introductory text of paragraph (e)(2) to read as follows:

§ 150.160 Fruit preserves and jams.

* * * * *

(e)(2) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

192. Section 150.161 is amended by adding new paragraph (h) to read as follows:

§ 150.161 Artificially sweetened fruit preserves and jams.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 152—FRUIT PIES

193. The authority citation for 21 CFR part 152 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

194. Section 152.126 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 152.126 Frozen cherry pie.

(a) * * *

(4)(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 155—CANNED VEGETABLES

195. The authority citation for 21 CFR part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

196. Section 155.120 is amended by revising paragraph (a)(5) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(5) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

197. Section 155.130 is amended by revising paragraph (a)(5) to read as follows:

§ 155.130 Canned corn.

(a) * * *

(5) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

198. Section 155.131 is amended by revising paragraph (a)(1) to read as follows:

§ 155.131 Canned field corn.

(a) *Identity.* (1) Canned field corn conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, prescribed for canned corn by § 155.130(a), except that the corn ingredient consists of succulent field corn or a mixture of succulent field corn and succulent sweet corn.

* * * * *

199. Section 155.170 is amended by revising paragraph (a)(4) to read as follows:

§ 155.170 Canned peas.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

200. Section 155.172 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 155.172 Canned dry peas.

(a) *Identity.* Canned dry peas conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, prescribed for canned peas by § 155.170(a), except that:

* * * * *

201. Section 155.190 is amended by revising paragraph (a)(6) to read as follows:

§ 155.190 Canned tomatoes.

(a) * * *

(6) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

202. Section 155.191 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 155.191 Tomato concentrates.

(a) * * *

(3) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that water need not be declared in the ingredient statement when added to adjust the tomato soluble solids content of tomato concentrates within the range of soluble solids levels permitted for these foods.

* * * * *

203. Section 155.194 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 155.194 Catsup.

(a) * * *

(3) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter; except that the name "tomato concentrate" may be used in lieu of the names "tomato puree," "tomato pulp," or "tomato paste" and when tomato concentrates are used, the labeling requirements of § 155.191(a)(3)(ii) (*a*) and (a)(3)(ii)(*b*) do not apply.

* * * * *

204. Section 155.200 is amended by revising paragraph (h) to read as follows:

§ 155.200 Certain other canned vegetables.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

205. Section 155.201 is amended by revising paragraph (a)(4)(ii) to read as follows:

§ 155.201 Canned mushrooms.

(a) * * *

(4) * * *

(ii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 156—VEGETABLE JUICES

206. The authority citation for 21 CFR part 156 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371).

207. Section 156.145 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 156.145 Tomato juice.

(a) * * *

(2) * * *

(ii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 158—FROZEN VEGETABLES

208. The authority citation for 21 CFR part 158 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371).

209. Section 158.170 is amended by revising paragraph (a)(4) to read as follows:

§ 158.170 Frozen peas.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 160—EGGS AND EGG PRODUCTS

210. The authority citation for 21 CFR part 160 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

211. Section 160.105 is amended by adding new paragraph (e) to read as follows:

§ 160.105 Dried eggs.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

212. Section 160.110 is amended by adding new paragraph (d) to read as follows:

§ 160.110 Frozen eggs.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

213. Section 160.115 is amended by redesignating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 160.115 Liquid eggs.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

214. Section 160.140 is amended by adding new paragraph (c) to read as follows:

§ 160.140 Egg whites.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

215. Section 160.145 is amended by adding new paragraph (f) to read as follows:

§ 160.145 Dried egg whites.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

216. Section 160.150 is amended by adding new paragraph (c) to read as follows:

§ 160.150 Frozen egg whites.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

217. Section 160.180 is amended by redesignating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 160.180 Egg yolks.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

218. Section 160.185 is amended by adding new paragraph (e) to read as follows:

160.185 Dried egg yolks.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

219. Section 160.190 is amended by redesignating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 160.190 Frozen egg yolks.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 161—FISH AND SHELLFISH

220. The authority citation for 21 CFR part 161 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

221. Section 161.145 is amended by adding new paragraph (a)(4) to read as follows:

§ 161.145 Canned oysters.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

222. Section 161.170 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 161.170 Canned Pacific salmon.

(a) * * *

(5) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

223. Section 161.173 is amended by revising paragraph (a)(5)(ix) to read as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

(a) * * *

(5) * * *

(ix) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

224. Section 161.175 is amended by adding new paragraph (i) to read as follows:

§ 161.175 Frozen raw breaded shrimp.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

225. Section 161.190 is amended by adding new paragraph (a)(9) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(9) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 163—CACAO PRODUCTS

226. The authority citation for 21 CFR part 163 continues to read as follows:

Authority: Secs. 201, 301, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 376).

227. Section 163.110 is amended by adding new paragraph (c) to read as follows:

§ 163.110 Cacao nibs.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

228. Section 163.111 is amended by adding new paragraph (c) to read as follows:

§ 163.111 Chocolate liquor.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

229. Section 163.112 is amended by adding new paragraph (c) to read as follows:

§ 163.112 Breakfast cocoa.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

230. Section 163.113 is revised to read as follows:

§ 163.113 Cocoa.

Cocoa, medium fat cocoa conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for breakfast cocoa by § 163.112, except that it contains less than 22 percent but not less than 10 percent of cacao fat as determined by the method referred to in § 163.112(a).

231. Section 163.114 is revised to read as follows:

§ 163.114 Lowfat cocoa.

Lowfat cocoa conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method prescribed in § 163.112(a).

232. Section 163.117 is amended by revising paragraph (a) to read as follows:

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacturing is the food additive complying with the provisions in § 172.520 of this chapter. It conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, for breakfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

* * * * *

233. Section 163.123 is amended by adding new paragraph (i) to read as follows:

§ 163.123 Sweet chocolate.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

234. Section 163.130 is amended by adding new paragraph (f) to read as follows:

§ 163.130 Milk chocolate.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

235. Section 163.135 is amended by adding new paragraph (c) to read as follows:

§ 163.135 Buttermilk chocolate.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

236. Section 163.140 is amended by adding new paragraph (c) to read as follows:

§ 163.140 Skim milk chocolate.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

237. Section 163.145 is amended by adding new paragraph (c) to read as follows:

§ 163.145 Mixed dairy product chocolates.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

238. Section 163.150 is amended by adding new paragraph (d) to read as follows:

§ 163.150 Sweet cocoa and vegetable fat (other than cacao fat) coating.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

239. Section 163.153 is amended by adding new paragraph (c) to read as follows:

§ 163.153 Sweet chocolate and vegetable fat (other than cacao fat) coating.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

240. Section 163.155 is amended by adding new paragraph (c) to read as follows:

§ 163.155 Milk chocolate and vegetable fat (other than cacao fat) coating.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

PART 164—TREE NUT AND PEANUT PRODUCTS

241. The authority citation for 21 CFR part 164 continues to read as fo11ows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

242. Section 164.110 is amended by revising the introductory text of paragraph (e), by removing paragraphs (e)(3) and (e)(4), and by revising paragraph (f) to read as follows:

§ 164.110 Mixed nuts.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

(f) The words and statements specified in paragraph (e) of this section showing the ingredients present shall be listed on the principal display panel or panels or any appropriate information panel without obscuring design, vignettes, or crowding. The declaration shall appear in conspicuous and easily legible letters of boldface print or type the size of which shall be not less than one-half of that required by part 101 of this chapter for the statement of net quantity of contents appearing on the label, but in no case less than one-sixteenth of an inch in height. The entire ingredient statement shall appear on at least one panel of the label. If the label bears any pictorial representation of the mixture of nuts, it shall depict the relative proportions of the nut ingredients of the food. if the label bears a pictorial representation of only one of each nut ingredient present, the nuts shall be depicted in the order of decreasing predominance by weight. A factual statement that the food does not contain a particular nut ingredient or ingredients may be shown on the label if the statement is not misleading and does not result in an insufficiency of label space for the proper declaration of information required by or under authority of the act to appear on the label.

243. Section 164.150 is amended by revising paragraph (e) to read as follows:

§ 164.150 Peanut butter.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 166—MARGARINE

244. The authority citation for 21 CFR part 166 continues to read as follows:

Authority: Secs. 201, 401, 403, 407, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 347, 348, 371, 376).

245. Section 166.110 is amended by revising paragraph (d) to read as follows:

§ 166.110 Margarine.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. For the purposes of this section the use of the term "milk" unqualified means milk from cows. If any milk other than cow's milk is used in whole or in part, the animal source shall be identified in conjunction with the word milk in the ingredient statement. Colored margarine shall be subject to the provisions of section 407 of the Federal Food, Drug, and Cosmetic Act as amended.

PART 168—SWEETENERS AND TABLE SIRUPS

246. The authority citation for 21 CFR part 168 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

247. Section 168.110 is amended by revising paragraph (b) to read as follows:

§ 168.110 Dextrose anhydrous.

* * * * *

(b) The name of the food is "Dextrose anhydrous" or "Anhydrous dextrose" or alternatively, "_____sugar anhydrous" or "Anhydrous _____sugar", with the blank to be filled with the name of the food source, for example, "Corn sugar anhydrous".

248. Section 168.111 is amended by revising paragraph (c) to read as follows:

§ 168.111 Dextrose monohydrate.

* * * * *

(c) The name of the food is "Dextrose monohydrate" or "Dextrose" or alternatively, "_____sugar monohydrate" or "_____sugar", with the blank to be filled with the name of the food source, for example, "Corn sugar monohydrate" or "Corn sugar".

* * * * *

249. Section 168.130 is amended by revising paragraph (d) to read as follows:

§ 168.130 Cane sirup.

* * * * *

(d) *Label declaration.* Each of the ingredients used ln the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

250. Section 168.140 is amended by revising paragraph (d) to read as follows:

§ 168.140 Maple sirup.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

251. Sectlon 168.160 is amended by revising paragraph (d) to read as follows:

§ 168.160 Sorghum sirup.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

252. Section 168.180 is amended by revising (d)(1) to read as follows:

§ 168.180 Table sirup.

* * * * *

(d) * * *

(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 169—FOOD DRESSINGS AND FLAVORINGS

253. The authority citation for 21 CFR part 169 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

254. Section 169.115 is amended by revising paragraph (e) to read as follows:

§ 169.115 French dressing.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

255. Section 169.140 is amended by revising paragraph (f) to read as follows:

§ 169.140 Mayonnaise.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

256. Section 169.150 is amended by revising paragraph (g) to read as follows:

§ 169.150 Salad dressing.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

257. Section 169.175 is amended by adding new paragraph (c) to read as follows:

§ 169.175 Vanilla extract.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

258. Section 169.176 is amended by revising paragraph (a) to read as follows:

§ 169.176 Concentrated vanilla extract.

(a) Concentrated vanilla extract conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla extract by § 169.175, except that it is concentrated to remove part of the solvent, and each gallon contains two or more units of vanilla constituent as defined in § 169.3(c). The content of ethyl alcohol is not less than 35 percent by volume.

* * * * *

259. Section 169.177 is amended by revising paragraph (a) to read as follows:

§ 169.177 Vanilla flavoring.

(a) Vanilla flavoring conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla extract by § 169.175, except that its content of ethyl alcohol is less than 35 percent by volume.

* * * * *

260. Section 169.178 is amended by revising paragraph (a) to read as follows:

§ 169.178 Concentrated vanilla flavoring.

(a) Concentrated vanilla flavoring conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla flavoring by § 169.177, except that it is concentrated to remove part of the solvent, and each gallon contains two or more units of vanilla constituent as defined in § 169.3(c).

* * * * *

261. Section 169.179 is amended by adding new paragraph (d) to read as follows:

§ 169.179 Vanilla powder.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

262. Section 169.180 is amended by revising paragraph (a) to read as follows:

§ 169.180 Vanilla-vanillin extract.

(a) Vanilla-vanillin extract conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla extract by § 169.175, except that for each unit of vanilla constituent, as defined in § 169.3(c), contained therein, the article also contains not more than one ounce of added vanillin.

* * * * *

263. Section 169.181 is amended by revising paragraph (a) to read as follows:

§ 169.181 Vanilla-vanillin flavoring.

(a) Vanilla-vanillin flavoring conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla-vanillin extract by § 169.180, except that its content of ethyl alcohol is less than 35 percent by volume.

* * * * *

264. Section 169.182 is amended by revising paragraph (a) to read as follows:

§ 169.182 Vanilla-vanillin powder.

(a) Vanilla-vanillin powder conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla powder by § 169.179, except that for each unit of vanilla constituent as defined in § 169.3(c) contained therein, the article also contains not more than 1 ounce of added vanillin.

* * * * *

Dated: May 28, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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June 21, 1991

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2510 and 2617

Annuitization of Participants and Beneficiaries Covered Under Employee Pension Plans; Selection of Annuity Providers for Terminating Pension Plans; Proposed Rules

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR 2510

Annuitization of Participants and Beneficiaries Covered Under Employee Pension Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking solicits comments from the public on issues which the Department of Labor (the Department) has under consideration in deciding whether to publish a proposed regulation under title I of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) establishing minimum standards for purposes of determining whether an annuity contract purchased from a particular insurance company serves to relieve a plan of future liability with respect to the participant or beneficiary on whose behalf the annuity is purchased. While it is clear that ERISA's fiduciary standards govern a plan fiduciary's consideration and selection of annuity providers, the Department believes that, in addition to and independent of the fiduciary standards, minimum standards for annuity providers may be appropriate and necessary in order to ensure a reasonable likelihood that participants or beneficiaries on whose behalf annuities are purchased will receive their promised pension benefits. Generally, under current Department regulations, a participant or beneficiary ceases to be a participant covered under an employee pension plan or a beneficiary receiving benefits under such plan if the entire benefit rights of the individual are fully guaranteed by an insurance company "licensed to do business in a state." One method for providing such minimum standards would be to amend the current regulation defining a participant covered under the plan. A consequence of such an approach would be to redefine the circumstances under which a participant or beneficiary ceases to be a covered participant or beneficiary, as well as the liability of the plan with respect to the participant or beneficiary. Accordingly, any such standards would, if adopted, affect participants, beneficiaries, plan sponsors and fiduciaries subject to title I of ERISA, as well as insurance carriers which compete for the business of issuing annuity contracts. The purpose of this notice is to obtain information from the public on whether minimum standards are necessary and what form such standards might take. A similar notice issued by the Pension Benefit Guaranty Corporation (PBGC) for purposes of title IV of ERISA appears elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before August 20, 1991.

ADDRESSES: Comments (preferably, at least three copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: "Annuity Standards Notice." All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210; telephone (202) 523–8671; or Diane M. Pedulla, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523–9597. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

Pension plans may purchase annuity contracts in a variety of circumstances. Annuities might be purchased for participants and beneficiaries in connection with the termination of a plan or, in the case of an ongoing plan, annuities might be purchased for participants who are retiring or separating from service with accrued vested benefits. Generally, when a plan purchases an annuity contract on behalf of a participant or beneficiary, whether upon termination of the plan or upon a participant's retirement or separation from service, it is the intention of the plan fiduciary purchasing the annuity to transfer liability for benefits promised under the plan from the plan to the annuity provider (i.e., the insurance company).

Pursuant to regulations issued by the Department, individuals cease to be participants covered under an employee pension plan or a beneficiary receiving benefits under an employee pension plan if the entire benefit rights of the individual are fully guaranteed by an insurance company, insurance service or insurance organization licensed to do business in a State, are legally enforceable by the sole choice of the individual against the insurance company, insurance service or insurance organization, and a contract, policy or certificate describing the benefits to which the individual is entitled under the plan has been issued to the individual. 29 CFR 2510.3–3(d)(2)(ii). Similarly, the Department, the Internal Revenue Service (IRS) and the PBGC have consistently taken the position that, for annual reporting purposes, the term "participant" does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan. See: Form 5500 Annual Return/Report Instructions, item 7.

Several developments over the past few years have resulted in questions being raised about the security of the pension benefits promised to participants and beneficiaries under annuity contracts purchased on their behalf. In particular, concerns have been expressed about the ability of certain insurance carriers to satisfy their annuity liabilities because their investment portfolios contain substantial amounts of high-risk, high-yield debt securities (also known as "junk bonds") or troubled real-estate loans, or a combination of both.[1] The basis for such concerns is best exemplified by the recent and well publicized developments involving the Executive Life Insurance Companies of California and New York. State regulators in both California and New York were forced to take control of the operations of the Executive Life Companies, whose poor financial condition is principally attributable to substantial investments in high risk bonds.

The Department has long held the view that the selection of an annuity provider is an act governed by the fiduciary responsibility provisions of ERISA, including the exclusive purpose, prudence, and prohibited transaction provisions.[2] While ERISA's fiduciary provisions are intended, among other things, to ensure that the interests of plan participants and beneficiaries are not compromised in the annuity selection process, the Department believes it may nonetheless be appropriate to establish independent

[1] See, in this regard, Insurance Company Failures: Hearings Before the Subcomm. on Oversight and Investigation of the House Comm. on Energy and Commerce, 101st Cong., 2nd Sess. 101–204 (1990).

[2] See: ERISA sections 403(c)(1), 404(a)(1)(A), 404(a)(1)(B), 406, and March 13, 1986 Department of Labor letter to John N. Erlenborn.

minimum standards relating to the quality of annuity providers which would serve to ensure a reasonable likelihood that all participants and beneficiaries on whose behalf annuities are purchased will receive their promised pension benefits. In this regard, the Department is considering amending § 2510.3–3(d)(2)(ii)(A) to require plans to purchase annuity contracts from an insurer which, in addition to being licensed to do business in a State, meets certain qualitative standards before the participant on whose behalf the annuity is purchased ceases to be a participant covered under the plan.[3]

The PBGC is also considering whether additional regulatory guidance under title IV of ERISA is necessary with respect to the purchase of annuities as part of the plan termination process, and has invited public comment on a number of relevant issues. Many of the issues identified by the PBGC in the course of its consideration of this problem under title IV of ERISA are equally relevant to consideration by the Department as to what regulatory action, if any, should be taken under title I of ERISA with regard to the purchase of annuity contracts for vested participants in ongoing plans who have retired or separated from service, as well as for participants in terminated plans. In this regard, the Department is working closely with PBGC on issues arising from the purchase of annuity contracts in order to develop a coordinated approach and to prevent any unnecessary duplication of regulation.

B. Issues Under Consideration

This notice is being published in order to obtain information and comments from the public for consideration by the Department in deciding whether to propose a regulation relating to the purchase of annuity contracts for plan participants and beneficiaries, and, if so, whether and to what extent any such regulation should provide minimum standards for determining whether the purchase of an annuity contract would relieve the plan of future liability with respect to the participant or beneficiary for whom the annuity is purchased.

As stated previously, one method for providing such minimum standards would be to amend 29 CFR 2510.3–3(d)(2)(ii)(A). A consequence of such an approach would be that a participant would cease to be a participant covered under the plan only to the extent that prescribed minimum standards are satisfied. Where an annuity contract is purchased from an insurer which does not satisfy the prescribed standards, the participant would continue to be covered under the plan and the plan would continue to be liable for the payment of any benefits to which the participant is entitled under the terms of the plan in the event of the annuity provider's default. The establishment of minimum standards would not limit the continued application of ERISA's fiduciary rules to the selection of annuity providers.

In order to assist interested parties in responding, this notice contains specific questions for comment and describes in some detail the context or background for these questions. The Department will analyze the responses to this notice as part of its process of determining whether regulatory action is necessary or appropriate and what form any needed action should take. To facilitate public comment, each specific question is numbered consecutively, with each question appearing under the heading "Requests for Comments." It is requested that the public, in responding to specific questions contained within this notice, refer to the question number or numbers listed in this notice.[4] Reference to the appropriate question number will assist the Department in analyzing the responses.

The Department also requests comments and suggestions concerning any other approaches or issues pertinent to the Department's consideration of whether to establish qualitative standards applicable to the purchase of annuity contracts on behalf of plan participants and beneficiaries.

Processes for Selecting Annuity Providers

The Department seeks information in several areas concerning the processes by which plan fiduciaries presently select annuity providers. Additional information concerning these processes would assist the Department in determining whether there is a need for additional regulation.

Request for Comments

(1) At what point in the annuitization process does a plan fiduciary begin to solicit bids for the purchase of annuity contracts?

(2) What processes do plan fiduciaries use in soliciting bids from annuity providers?

(3) What factors do plan fiduciaries consider in selecting an annuity provider?

(4) How many bids does a plan administrator typically obtain before selecting the provider, and how long does it typically take for the plan administrator to obtain bids?

(5) What processes do plan fiduciaries use in attempting to resolve conflicts between considerations of price and considerations of quality in selecting annuity providers?

(6) To what extent do plan fiduciaries rely upon independent experts in selecting an annuity provider?

(7) To what extent do plan fiduciaries or their consultants rely, in selecting an annuity provider, upon ratings of insurers by nationally recognized rating services?

(8) What information relating to the financial soundness of annuity providers, other than ratings, do plan fiduciaries rely upon in selecting a provider?

(9) Once a plan fiduciary has selected an annuity provider, how long does it typically take for the annuity contracts to be purchased and issued to participants?

(10)(a) When, in the plan termination process, does a plan become contractually liable to purchase annuities from the selected provider, and, in particular, can the plan be released from its contract to purchase annuities (either with or without any fees or costs to the plan) if the insurer suffers a financial setback prior to final distribution of plan assets?

(b) When, in the plan termination process, do the annuity contracts purchased for plan participants become "irrevocable," i.e., they cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and are legally enforceable by the participant or beneficiary?

(11) To what extent are the fiduciary standards of ERISA, in the absence of any prescribed minimum qualitative standards, sufficient to ensure that participants and beneficiaries receive secure annuities?

[3] 29 CFR 2510.3–3(d)(2)(ii)(A) provides that an individual is not a participant covered under an employee pension benefit plan or a beneficiary receiving benefits under such a plan if the entire benefit rights of the individual are fully guaranteed by a state-licensed insurance company, insurance service or insurance organization, are legally enforceable by the sole choice of the individual against the insurance carrier, and are evidenced by a contract, policy or certificate describing the benefits to which the individual is entitled pursuant to the terms of the plan.

[4] For example, response from the public concerning to what extent plan fiduciaries rely on independent experts in selecting an annuity provider should refer to Question number 6 of this notice.

State Regulatory Requirements and Guaranty Programs

Historically, regulation of insurance companies has been conducted at the state government level. This is reflected by the enactment in 1945 of the McCarran-Ferguson Act, in which Congress indicated that insurance regulation appropriately should occur at the state rather than the federal level. States have enacted various laws and regulations which are aimed at protecting policyholders and investors against insurer insolvency through such mechanisms as financial examinations, requirements concerning the insurance company's levels of reserves and capital surplus, regulation of the insurer's investments, and guarantee fund coverage. It may therefore be appropriate, if selection requirements for annuity providers are to be promulgated, for the Department to consider the level of protection provided by state regulatory requirements and guaranty programs.

State Regulatory Requirements. Each insurer doing business within a state must submit to the state insurance commissioner an annual statement of its financial affairs. In an increasing number of states, insurers also are required to submit comprehensive annual audited financial reports to the state insurance department. State insurance departments are vested with the authority to examine the financial affairs of any insurance company doing business in the state. The states also conduct financial audits on a periodic basis of insurance companies that do business within their borders.

States historically have established minimum capital and surplus requirements that an insurance company must meet in order to be licensed to sell insurance within the state. Such state requirements, however, typically are not based upon the insurer's investment risks or the volume of business written by the insurer. State insurance laws and regulations also regulate the methodology by which the insurer's policy reserves and surplus are calculated. Such requirements are aimed at assuring that the insurance company's reserves, along with future premium payments and anticipated earnings, will enable the company to pay all future policyholder obligations on a timely basis. In some states, a qualified expert must provide a certification that the insurer's reserves have been correctly valued and are sufficient to provide for the company's financial obligations.

State insurance laws and regulations also regulate the form and amount of the investments that may be made by insurance companies. Permissible investments that may be made by insurance companies, as well as those which are prohibited, are set forth by statute. Many states have placed certain limitations upon the percentage of the insurer's assets that may be placed in a certain category of investment, most frequently with regard to investments in common and preferred stocks and real estate. Recently, as a result of concern about the decline of the high risk bond market, there has been legislative activity in the states with respect to limiting the percentage of the insurer's assets that may be held in bonds that are not rated as "investment grade" by bond rating organizations.

State guaranty Programs. At the present time, state insurance departments are responsible for administering the liquidation of insolvent companies. In addition, forty-seven states and Puerto Rico have established statutory guaranty programs, which are responsible for paying policyholder obligations if the insurer becomes insolvent. The structure of the guaranty programs vary from state to state, but generally they are administered by an association composed of the insurance companies that do business within a state.

State Guaranty programs that cover annuity policies are not funded in advance of an insurer's insolvency, but rather are financed on a "post-assessment" ("pay-as-you-go") basis. When an insolvency occurs, solvent insurers are assessed certain amounts (generally based upon a percentage of the premiums they collect) that are used to pay the obligations to policyholders of insolvent companies. In some states, there is a cap (generally based upon premium volume) on the amount that can be assessed each year against a solvent company.

Most state guaranty programs have placed certain limitations upon the policyholder obligations that they cover. In most states, the guaranty program is not required to guaranty claims under annuity contracts above a certain dollar amount per policyholder, usually $100,000.

State guaranty programs also typically have residency requirements. Generally, a state guaranty program is not responsible for obligations incurred by insurance companies that are not licensed to do business within the state. Further, even if the insolvent insurer is licensed to do business in the state, the state guaranty program may provide no coverage or only limited coverage to individuals who are not residents of the state at the time of the insurer's insolvency. The National Association of Insurance Commissioners (NAIC) has proposed model legislation that provides for reciprocity among state guaranty programs with respect to residency requirements.

The Department is interested in receiving comments concerning the amount of protection provided to annuitants by state regulatory requirements and guaranty programs and concerning whether and how present state regulation and guaranty programs could be incorporated into any regulation by the Department concerning the selection of annuity providers.

Request for Comments

(12) To what extent do state regulatory requirements, in combination with state guaranty programs (in states where they exist), sufficiently assure that annuitants will receive the amounts promised to them under their annuity contracts?

(13) In which particular states do (i) state regulatory requirements, and (ii) state guaranty programs, serve as a model with respect to the protection they provide annuitants?

(14) Are the funding mechanisms and requirements under state guaranty programs adequate to assure that policyholders will not experience losses as the result of insurance company insolvencies?

(15) To what extent do (i) residency requirements and (ii) other limitations significantly impact upon coverage in state guaranty programs with regard to the protection of annuitants?

(16) Should any Department of Labor regulation concerning the selection of annuity providers take into account the strength of regulatory requirements and guaranty programs in the states where the plan administrator, insurer, or participants are domiciled? If so, should state requirements and guaranty programs be considered in conjunction with other requirements, or as an alternative to other requirements?

Ratings By Nationally Recognized Rating Services

There presently are several nationally recognized rating services, such as A.M. Best Company, Inc. ("Best"), Duff & Phelps, Inc. ("Duff"), Moody's Investor's Inc. ("Moody's"), and Standard & Poor's Corporation ("S & P"), which assess the financial strength or claims-paying ability of insurance companies. The rating organizations, which are operated by private-sector enterprises, generally will provide a rating, for a fee, at the

request of an insurance company. In some instances, however, the rating organizations will rate an insurance company on their own initiative. While the coverage of the insurance industry by nationally recognized ratings services is comprehensive, some insurance companies, typically of small to medium size, may not have received a rating or may have only a single rating from a rating service.

In rating insurance companies, the rating organizations examine factors such as their profitability, capital adequacy, liquidity, claims-paying history, investment risks, and management quality. The assessment of these factors is derived from financial statements filed by the insurance companies with state regulatory agencies, other financial information collected by the ratings organizations (including information obtained from non-public sources), meetings with the insurance company's management, and other sources. Although the methodologies the ratings services utilize for rating companies are basically similar, there are some differences among the organizations concerning their sources of information, the specific factors they consider in their assessments, and how they weigh those factors.

The rating organizations assign specific rating classifications to the insurance companies they rate. The highest level of rating (e.g. A+ from Best, AAA from Duff, Aaa from Moody's or AAA from S & P) is assigned to insurance companies that, in the opinion of the rating organization, have achieved "superior" or "exceptional" financial security with respect to their policyholder and other contractual obligations. The second highest rating level (e.g., A from Best, AA from Duff, Aa from Moody's, or AA from S & P) is assigned to insurance companies that have "excellent" or a "very high" financial strength or claims paying ability, but nevertheless are susceptible to risk if adverse economic or underwriting changes occur in the future. A lower rating denotes a lower level of financial security and indicates that the claims-paying ability of the insurance company may be speculative with respect to future obligations. Insurance companies that are facing liquidation under state insolvency proceedings are assigned a rating level below the level of "C" or are not assigned a rating by the rating organization.

If the Department were to establish minimum standards for the selection of annuity providers, the utilization of these pre-existing ratings could have certain advantages, since the rating services have developed expertise in assessing the financial strength of insurance companies, and their ratings have obtained a certain level of acceptance in the marketplace.

Request for Comments

(17) Do ratings by nationally-recognized rating services provide a sufficiently reliable assessment of an annuity provider's capacity to meet the obligations of its annuity contracts?

(18) How current is the information upon which the ratings are based, and how often are the ratings updated? Does the frequency with which ratings are updated have an effect upon their reliability concerning the annuity provider's capacity to meet its annuity obligations?

(19) If the Department were to adopt minimum standards relating to the selection of annuity providers, should such standards be based on the ratings from rating organizations? If so, which particular ratings services should be used, *i.e.*,

(a) Are there any significant differences among rating organizations, such as Best, Duff, Moody's, and S & P, with respect to whether their ratings are reliable measures of the ability of insurance companies to meet their future annuity contract obligations?

(b) How equivalent are the rating levels assigned by the various ratings organizations (e.g., is an A rating from Best, an AA from Duff, an Aa from Moody's, and AA from S & P essentially an equivalent measure of an insurance company's financial security)?

(20) If the Department were to adopt minimum standards based on ratings, should the ratings be used as the sole standard, or should they be used in conjunction with other criteria which relate to the financial soundness of the insurer? If so, what other criteria should be used?

(21) If minimum standards based on ratings were adopted,

(a) What particular levels, or combination of levels, of ratings from the rating services should the Department require? For example, should the required rating level be the highest (e.g., AAA from S & P and Duff, Aaa from Moody's, or A+ from Best), second highest (e.g., AA from S & P and Duff, Aa from Moody's, or A from Best), or the third highest (e.g., A from S & P, Duff, or Moody's, or A— from Best)?

(b) How many ratings should be required and should this requirement depend on the size of the insurer?

(c) How should "watchlist" and "contingent" ratings be treated?

(22) Should any standards that are promulgated by the Department require that the insurance company be given an acceptable rating from all the ratings organizations that rate it?

(23) If minimum standards based on ratings were adopted, should an insurance company be required to have maintained the specified rating, or a higher rating, for a specific number of years, if so, how many?

(24) If a rating is required to have been maintained for a particular number of years to meet a ratings-based minimum standard, what, if any, exceptions should be considered for new or previously unrated insurance companies, including newly established subsidiaries of rated-parent insurance companies?

Other Criteria Concerning Financial Security

As discussed above, under state regulatory schemes, insurance companies must satisfy various financial requirements, including those related to the company's reserves, capital surplus, types of investments, and other criteria concerning its financial condition. However, there may be wide differences among states in the degree to which such regulatory requirements protect annuity contract holders against potential loss. It also might be administratively impractical for the Department to base regulatory requirements upon state requirements, particularly in light of the variation in state regulatory practices and the possibility that plan administrators, insurers, and pension plan participants may be domiciled in different states. Thus, an appropriate regulatory option might be for the Department to develop independent criteria for the selection of the insurer. Ideally, such criteria might be comprised of objective measures of the insurer's financial security that would not be difficult for plan administrators or their consultants to apply in making annuity provider selections, or for the Department to apply in reviewing those selections.

Request for Comments

(25) Should the Department promulgate minimum standards for the selection of annuity providers based

upon the insurer's reserves, surplus, type of investments, and other similar objective criteria that relate to the financial security of the insurer? If so, what should they contain?

(26) If specific criteria for the selection of annuity providers are established, should such criteria comprise the entire basis for any regulatory requirement, or should they be used in conjunction with other considerations, such as ratings from nationally-recognized ratings organizations?

(27) If the Department were to develop its own criteria for the selection of the annuity provider, what should they contain?

(28) If minimum standards are established, should the Department require a certification from a qualified expert (in accordance with state law, if state law provides for a financial valuation of the insurer's assets and liabilities) to authenticate that the insurer meets these criteria?

(29) If minimum standards are established, under what circumstances, if any, should a plan be permitted to purchase annuities from providers that do not meet specified requirements?

Reinsurance and Other Risk and Cost Sharing Arrangements in the Insurance Industry

Reinsurance is the process whereby insurance companies spread their risk exposure by transferring portions of specific policy liability to other insurance companies in return for their receiving part of the premiums or other payments. For reinsurers, reinsurance provides an opportunity to share, for a fee, in the business generated by other companies without the responsibility for developing customers and handling claims. Issuers of annuity contracts who obtain reinsurance are benefited by the reduction in their risk exposure on specific policies.

There may be other cost and risk sharing arrangements that exist both formally and informally within the insurance industry. The Department is interested in learning more about reinsurance and other risk and cost sharing arrangements within the insurance industry, and whether such arrangements provide protection to annuitants in the event that the insurance company that issues the annuity contract fails.

Request for Comments

(30) To what extent do reinsurance and other formal and informal risk and cost-sharing arrangements exist among insurance companies with respect to annuity contracts?

(31) What protection do such existing risk and cost-sharing arrangements provide to annuitants?

(32) To what extent, and in what manner, should such risk and cost sharing arrangements be considered in any regulations the Department may issue concerning the selection of annuity providers?

C. Impact of Possible Regulatory Activity

The purpose of any regulatory activity by the Department concerning the selection of annuity providers is to assure that the annuities distributed to plan participants upon separation from service, retirement or upon termination of the plan are financially secure. However, the Department recognizes that its regulation of the annuity selection decision may have substantial impact upon plan sponsors, annuity providers and plan policyholders, plan participants and beneficiaries, other federal and state government agencies, and other parties involved in the operation of the private sector pension system. For example, Department regulation could have the effect of reducing the number of qualified providers that could sell annuities to pension plans, thereby concentrating competition within the insurance industry or within the annuity products segment of it. Department regulation could also have the impact of increasing prices and decreasing the availability of annuities for both pension plans and other purchasers of annuity contracts.

Request for Comments

(33) For the regulatory options identified in this Advance Notice, the Department requests cost/benefit data and comment concerning the impact of those options upon the parties involved in the pension system and the public.

(34) If there are other regulatory approaches concerning the selection of annuity providers that the Department could adopt that would provide protection to pension plan participants and beneficiaries while minimizing possible detrimental effects of regulation, the Department requests cost/benefit data and comment concerning those approaches.

Signed at Washington, DC, this 18th day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

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Pension Benefit Guaranty Corporation

29 CFR Part 2617

RIN 1212-AA47

Selection of Annuity Providers for Terminating Pension Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking requests public comment concerning possible regulatory action by the Pension Benefit Guaranty Corporation ("PBGC") that would apply to the selection by pension plan administrators of annuity providers as part of the plan termination process under title IV of the Employee Retirement Income Security Act of 1974, as amended. PBGC regulations presently require that a terminating pension plan, in purchasing "irrevocable commitments" (annuity contracts) for the plan's participants, select an annuity provider that is "authorized to do business as an insurance carrier under the laws of a State or the District of Columbia." Additional regulatory requirements regarding annuity provider selection in terminating plans may be needed to ensure that participants receive financially-sound annuity contracts. The purpose and intended effect of this notice are to obtain information from the public on whether additional regulation by the PBGC is needed and what it might contain.

A similar notice issued by the Pension and Welfare Benefits Administration (PWBA) of the Department of Labor for purposes of title I of ERISA appears elsewhere in today's **Federal Register**.

DATES: Comments must be submitted on or before August 20, 1991.

ADDRESSES. Comments should be addressed to Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Angela Arnett, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8820 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Title IV of the Employee Retirement Income Security Act of 1974, as amended, (29 U.S.C. 1301–1461) ("ERISA"), which established the PBGC and its insurance programs, requires the PBGC to guarantee the payment of basic pension benefits in covered single-employer plans that terminate with insufficient assets to pay those benefits. Title IV also provides that the PBGC is to administer the statutory termination procedure for all terminating plans covered by the insurance program. See generally ERISA sections 4022, 4041(b), 4041(c), 4042, 4044, 4061.

ERISA's "standard termination" procedures apply to terminations of single-employer plans where plan assets are sufficient to satisfy all of the plan's benefit liabilities. ERISA section 4041(b). Under these procedures, the PBGC oversees the plan administrator's allocation of plan assets and distribution of benefits to ensure that plan participants receive the proper benefits upon termination. See generally ERISA sections 4041(b), 4044; 29 CFR part 2617.[1] In distributing the plan's assets, the plan administrator is required to provide for all benefit liabilities either (1) by the purchase of "irrevocable commitments" (annuity contracts) from an insurer, or (2) by providing benefits in other forms permitted by the provisions of the plan and any applicable regulations. ERISA section 4041(b)(3). The final distribution of all plan assets by the plan administrator, followed by the plan administrator's certification that such distribution has been accomplished, completes the plan termination process under a standard termination. ERISA section 4041(b)(3); 29 CFR 2617.20–2617.23.[2]

PBGC regulations provide that generally, when a pension plan terminates under standard termination procedures, any benefit payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of an "irrevocable commitment." 29 CFR 2617.4. An "irrevocable commitment" is defined in 29 CFR 2618.2 and Standard Termination Filing Instructions for PBGC Forms 500 and 501. The term means "an obligation by an insurer to pay benefits to a named plan participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary." For purposes of this advance notice, the term "annuity contract" has the same meaning as "irrevocable commitment." ERISA and PBGC regulations (29 CFR 2617.4) also allow a participant or beneficiary of a plan, with applicable spousal consent, to elect an alternative form of benefit distribution, such as a lump sum payment, if it is permitted under the provisions of the plan and applicable ERISA and Internal Revenue Code provisions.

The PBGC in its current regulations has provided plan administrators with only one express standard for the selection of an insurer to provide annuity contracts to participants in terminating sufficient plans. All such annuities must be purchased from "a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia." 29 CFR 2617.2, 2617.4, 2617.21(a).

The Purpose of This Advance Notice

The purpose of this advance notice of proposed rulemaking is to obtain information and comment from the public concerning whether additional regulation concerning the selection of an annuity provider is needed, and, if so, what such regulation should include. The PBGC is also interested in receiving comment concerning the impact that any regulatory activity might have upon the private sector pension system.

In order to assist interested parties in responding, this notice contains specific questions for comment and describes in some detail the context or background for these questions. The PBGC will analyze the responses to this notice as part of its process of determining whether regulatory action is necessary or appropriate and what form any needed action should take.

The public should keep in mind that the selection of an annuity provider by a pension plan is subject to the fiduciary requirements of title I of ERISA. The fiduciary requirements are administered and enforced by the Pension and Welfare Benefits Administration of the Department of Labor (PWBA). The discussion in this advance notice of possible standards or other regulatory requirements for the selection of annuity providers in terminating plans is not intended to address or define title I fiduciary requirements.

To facilitate public comment, we have numbered our specific questions consecutively, with each question appearing under the heading "Requests for Comments." We request that the public, in responding to specific questions contained within this notice, refer to the question number or numbers listed in this notice.[3] Reference to the appropriate question number will assist us in analyzing the responses.

The Possible Need for Regulatory Action

In the majority of plans that recently have terminated under standard termination procedures, all participants received their benefits as a lump sum. Nevertheless, approximately 20% of all pension plans that terminated in the latter part of 1990 purchased annuity contracts for at least some participants and beneficiaries. Although the purchase of annuities by terminating plans tends to occur in a higher percentage of large as compared to small pension plans, annuities have been purchased by all sizes of terminating plans.

To date, we know of no participant or beneficiary who has permanently lost benefits because of default by an insurance company on annuities purchased upon plan termination. We note, however, that in April, 1991, Executive Life Insurance Company, having sustained investment losses as a result of, among other things, the decline of the market for high risk bonds (also known as "junk bonds"), was placed in a court-supervised conservatorship by

[1] PBGC regulations concerning termination procedures for sufficient single-employer plans are in the process of being revised. On September 2, 1987, PBGC published a notice of proposed rulemaking in the **Federal Register**, 52 FR 33318, that would replace the PBGC regulations on Notice of Intent to Terminate (29 CFR part 2616) and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR part 2617), as modified by the Notice of Interim Procedures, 51 FR 12491 (April 10, 1986). The regulations to be replaced were, to a great extent, rendered obsolete by Congressional passage of the Single-Employer Pension Plan Amendments Act of 1986 (Pub. L. 99–272) ("SEPPAA"). Subsequently, Congress enacted the Pension Protection Act (subtitle D of title IX of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203) ("PPA"), further amending ERISA. The PBGC thereafter published a Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988), noting that the final regulations to be issued following consideration of comments on the proposed regulations will reflect the PPA revisions to ERISA as well as the SEPPAA revisions.

[2] ERISA, as amended by SEPPAA and PPA, also provides that the standard termination procedures in ERISA section 4041(b)(3) apply to pension plans that qualify for distress terminations under ERISA section 4041(c) if plan assets are sufficient for benefits guaranteed by the PBGC but are not sufficient to provide for all benefit liabilities. ERISA section 4041(c)(3)(B)(ii).

[3] For example, a response from the public concerning the point in the plan termination process in which plan administrators begin to solicit bids for the purchase of annuities should refer to Question number 4 of this notice.

the Insurance Commissioner of the State of California. At the present time, Executive Life is, by court order, restricted to paying only 70% of the amounts owed under retirement annuity policies. The court order also prohibits the company from commencing annuity payments to policyholders not yet in pay status. The California Commissioner has stated that he is seeking ways to rehabilitate the financial condition of Executive Life; thus, it is too soon to determine whether any payments under pension annuity contracts will be permanently affected.

Insurance companies are regulated by the states, and not by the federal government. Forty-seven states (soon to be 48) and Puerto Rico have guaranty arrangements that protect annuity contracts sold by licensed insurers. However, as discussed more fully below, these guaranty arrangements are not pre-funded and have limits and exclusions.

Different insurance companies have different investment philosophies, acquire and maintain different portfolios based on those philosophies, and are subject to different regulations depending upon the states in which they are doing business. Changes in economic conditions over the last several years have heightened those differences as some companies that may have chosen to seek higher returns by riskier investments have failed to achieve their anticipated investment returns. In particular, the recent decline of the high risk bond market and of certain sectors of the real estate markets have raised public concern that annuities purchased from some insurance companies may not be secure.

It has been suggested that this concern could be eliminated for certain of those annuity policyholders if PBGC were to insure annuity contracts purchased from private sector insurance companies for participants in terminating plans. However, after a thorough examination of ERISA's statutory provisions, the PBGC has concluded that it is not authorized to guarantee benefits provided under annuity contracts purchased from private sector insurance companies in the event that the insurer is unable to make payments under such contracts. A summary of the analysis follows.

The PBGC is not authorized to guarantee annuity contracts. The plan termination insurance program under title IV of ERISA was enacted based upon the Congressional finding that "owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits." ERISA section 2(a). Thus, title IV of ERISA was enacted, and the PBGC was established, so that benefits would be guaranteed in plans that terminate with insufficient funds to pay those benefits.

Since the inception of the single-employer insurance program, the program's "insurable event" has been plan termination. Thus, for example, ERISA section 4022(a) provides: "Subject to the limitations contained in subsection (b), the [PBGC] shall guarantee in accordance with this section the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates * * * ." (Emphasis added.) Similarly, ERISA section 4061 provides that "[t]he [PBGC] shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle B of this title." (Emphasis added.) See also *PBGC* v. *LTV*, 110 S.Ct. 2668, 2672 (1990). PBGC is not authorized to pay benefits upon the occurrence of any other event, such as the failure of an insurance company.

For single-employer plans terminating under standard termination procedures, the "insurable event" of plan termination is completed upon the final distribution of plan assets. The distribution of assets is accomplished when all benefit liabilities under the plan are satisfied through the purchase of annuity contracts, the payment of lump sum amounts, or the distribution of benefits in other forms permitted by the plan and by PBGC and Internal Revenue Service regulations.

Accordingly, the distribution of plan assets under title IV's standard termination procedures, in the correct amount and proper form, extinguishes the PBGC's guarantee obligation. Cf. ERISA section 4041(b)(4) (PBGC is obligated to insure the payment of guaranteed benefits if the plan administrator has not made a proper distribution, i.e., if a participant is overlooked or paid an incorrect amount and if the plan administrator does not promptly correct the error in distribution); H.R. Rep. No. 99–241, part 2, 99th Cong., 2d Sess., reprinted in, 1986 U.S. Code Cong. & Admin. News 706. For example, PBGC does not stand behind benefits distributed in a lump sum payment, nor protect from subsequent loss a participant who chooses to "roll over" a lump sum distribution into an Individual Retirement Account. Similarly, the failure of an insurance company subsequent to a proper distribution of plan assets through the purchase of irrevocable annuity contracts does not result in an insurable event or reinstate the PBGC guarantee.

It is also clear from the manner in which the PBGC's single-employer insurance program is financed that Congress did not intend for PBGC to guarantee benefits that have been satisfied by a full distribution of plan assets upon plan termination. The PBGC's guarantee is financed primarily through the payment of premiums by covered plans. ERISA section 4007(a) provides: "Premiums shall continue to accrue [for a sufficient plan] until a plan's assets are distributed pursuant to a termination procedure [under section 4041(b)]." Thus, once a sufficient plan has terminated in a standard termination, no further premiums are paid with respect to that plan.[4] Had Congress intended the PBGC to guarantee against a subsequent failure of the insurance company from which annuities were purchased, it surely would not have provided that the plan sponsor's premium obligation ends at plan termination; rather, it would have designed a premium structure that would take into account the potential liability for such a post-termination event.[5]

In a 1981 preamble to PBGC's regulation concerning the termination of "sufficient" plans, the PBGC responded to a comment on an earlier notice of proposed rulemaking by indicating that the PBGC would pay benefits "in the unlikely event that an insurance company should fail and its obligations cannot be satisfied (e.g., through a reinsurance system)." 46 FR 9532, at 9534 (January 28, 1981). This preamble statement appears to have been made without any legal analysis; the PBGC has found no legal memoranda or other document that supports it. And, after a detailed analysis of the statutory provisions, PBGC has concluded that its earlier preamble statement was

[4] The amount of the annual premium owed by a plan is based on the number of participants in the plan. ERISA section 4006. Under PBGC regulations (29 CFR 2610.2, 2620.22) no premium is owed for an individual who has received an irrevocable commitment from an insurer in satisfaction of his or her full plan benefit, because that individual no longer is a participant.

[5] Congress has recently reinforced the concept that the PBGC's premium structure is based on the financial liabilities to which the PBGC is exposed. Until 1987, the premium was simply a flat rate dollar amount, per year, per participant. In 1987, however, Congress enacted PPA to strengthen the single-employer insurance program. As part of the PPA reforms, Congress amended ERISA section 4006 to revise the single-employer plan premium structure. Under the revised structure, the existing flat rate premium was supplemented by an additional premium amount that is based on the amount of a plan's underfunding. Plan underfunding is, of course, a measure of the PBGC's financial exposure

incorrect. For the reasons summarized above, PBGC has determined that it is not authorized to guarantee benefits payable under annuity contracts.

The guarantee of annuity contracts is appropriately a state function. It is the PBGC's view that the guarantee function with respect to annuity contracts should remain with the States. Historically, matters relating to the regulation of insurance companies has occurred at the state government level. This is reflected by the enactment in 1945 of the McCarran–Ferguson Act, 15 U.S.C. 1011–1015, in which Congress indicated that insurance regulation should occur at the state rather than the federal level. Also, as previously mentioned, almost all of the states have guaranty programs. If these state guaranty programs are not adequate, then the States and the insurance industry should be encouraged to make them adequate.

A federal program for the guarantee of annuity contracts purchased by pension plans would raise many complex and contentious issues. As discussed above, no premiums are owed to the PBGC for former plan participants whose benefits have been distributed through a pension plan's purchase of annuities. Insuring annuity contracts purchased by pension plans could increase the exposure of PBGC's premium payers to another $50 billion. The most equitable method to fund a guaranty program for annuity contracts probably would be to establish a risk-adjusted premium structure. However, that would be difficult to accomplish, since there has been no loss experience with respect to annuity contracts. There are also other complicated issues that would have to be addressed. These include how to provide for the guarantee of the estimated $50 billion in annuities already in place, and how to integrate a federal program with existing state guaranty programs. In addition, if the federal government were to guarantee annuities, the States might have an incentive to exclude from state guaranty protection annuity contracts covered by the federal guarantee. And, insurance companies might feel they could invest in lower quality assets without lowering their prices if a federal guarantee were standing behind their annuity products. As insurance companies are now regulated by the States, a federal guarantor would be unable to regulate the investment decisions of the insurer unless it was specifically authorized to do so by Congress.

The PBGC seeks information concerning the risk to annuity policyholders. The PBGC is concerned that annuity contracts purchased for participants and beneficiaries in terminating pension plans be financially secure. However, the PBGC presently lacks information concerning the extent to which there is a risk that some insurance companies will become insolvent and will be unable to meet their obligations under irrevocable annuity contracts, and that such obligations will not be fully provided for by the insurance industry and/or state guaranty funds. In the Executive Life situation, for example, the company may be financially rehabilitated; other insurance companies may purchase some of Executive Life's lines of business; or the State of California, the insurance industry, and the securities industry might stand behind annuity contracts issued by Executive Life. In any event, it is too soon to tell whether any annuitant who was a former participant of a pension plan permanently will lose benefits because of Executive Life's conservatorship. Through publishing this notice, the PBGC seeks to obtain information from the public concerning whether an "insurer insolvency problem" exists with respect to annuity contracts, and, if so, what the scope of the problem is.

Requests for Comments

[1] To what extent are some annuity providers in the insurance industry in danger of becoming insolvent?

[2] If some providers are in danger of becoming insolvent, what would be the effect on annuity policyholders if a provider did become insolvent?

[3] Do the answers to the first two questions vary from state to state, depending upon such factors as insurance industry practice in different areas, the strength of state insurance regulation, and the existence and strength of state guaranty arrangements?

Annuity Purchase Procedures

The PBGC's knowledge is incomplete in several areas concerning the procedures by which plan administrators presently select annuity providers. Additional information concerning these procedures would assist the PBGC in determining whether there is a need for additional regulation and, if so, how such regulation might be structured.

Requests for Comments

[4] At what point in the plan termination process does a plan administrator begin to solicit bids for the purchase of annuities?

[5] How many bids does a plan administrator typically obtain before selecting the provider, and how long does it typically take for the plan administrator to obtain bids?

[6] How far in advance of final distribution of assets is the annuity provider generally selected, and are there any reasons why the selection of the provider could not or should not occur at an earlier or later point in the plan termination process?

[7] (a) When in the plan termination process does the plan become contractually liable to purchase annuities from the selected provider, and, in particular, can the plan be released from its contract to purchase annuities (either with or without any fees or costs to the plan) if the insurer suffers a financial setback prior to final distribution of plan assets?

(b) When in the termination process do the annuity contracts purchased for plan participants become "irrevocable," i.e., non-cancellable under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary, and legally enforceable by the participant or beneficiary?

Possible Options for Regulation

If a need for PBGC regulation concerning the selection of annuity providers is established, the PBGC must then determine the regulation's structure and content.[6] Several possible options are identified below, but PBGC is also interested in eliciting comments identifying other regulatory approaches.

Assuming that PBGC decided to regulate in this area, it would amend its regulations to provide that a plan could not terminate in a standard termination unless the plan complied with PBGC's requirements for the selection of annuity providers. For example, if the PBGC decided to adopt specific standards for the selection of annuity providers (see discussion below), and the annuity provider selected by the plan administrator did not meet those standards, the PBGC would issue a "notice of noncompliance" in accordance with ERISA section 4041(b)(2)(C). As under present PBGC regulations, the impact of a "notice of noncompliance" under any amended PBGC regulations would be that the plan

[6] It has been suggested that, even if a problem exists, federal regulation may be unwarranted, i.e., that the problem could be handled by strengthening state regulation, including state guaranty funds. The PBGC, of course, has no control over state legislatures, and notes that two states and the District of Columbia have not yet established guaranty funds. However, the PBGC will monitor and evaluate state legislative and regulatory developments relevant to the security of annuity policies in considering whether any federal regulatory activity is appropriate.

administrator would not be permitted to commence the final distribution of plan assets and the standard termination proceeding would be nullified.

Assessment by the Plan Administrator

One option is for the PBGC to provide by regulation that a plan administrator be required to consider certain criteria in selecting the insurer, such as its ratings by nationally recognized ratings services, the amount of its reserves, its investment portfolio, and/or the protection provided by state guaranty arrangements in the event of the insurer's insolvency. See discussion below. Under this approach, the PBGC would not establish specific standards for the selection of annuity providers, but would require instead that the plan administrator assess the financial strength of the annuity provider and certify that such an assessment was made.

Requests for Comments

[8] Should the PBGC adopt a regulation requiring the plan administrator to assess the financial strength of the annuity provider before selecting the provider, and if so, what factors should the plan administrator be required to assess?

[9] Would such a regulatory approach provide sufficient guidance and adequate protection to assure that participants and beneficiaries in terminating plans will receive financially sound annuity policies?

Assessment by Independent Experts

The PBGC could also require the plan administrator to obtain the opinion of an independent expert before it makes its selection of an annuity provider for the terminating plan. Such experts would have knowledge that plan administrators might generally lack concerning the financial strength of prospective annuity providers.

Requests for Comments

[10] Should the PBGC adopt a regulation requiring the plan administrator to obtain the opinion of an independent expert before selecting an annuity provider?

[11] Would such a requirement provide adequate protection to participants and beneficiaries in terminating plans?

[12] If such a requirement is adopted, what qualifications should such independent experts have?

[13] Should the PBGC specify the criteria to be used by independent experts in assessing the financial security of the provider?

Standards for Annuity Provider Selection

Another option would be for the PBGC to establish by regulation specific standards for the financial security of the annuity provider. Under this approach, the plan administrator would be required to select an annuity provider that meets the PBGC's standards. As discussed in the next section of this notice, such standards could be based upon a wide range of criteria, including ratings by nationally recognized rating services, the amount of the insurer's reserves, its investment portfolio, and/or the availability of state guaranty programs that would provide protection to annuitants.

Requests for Comments

[14] Should the PBGC adopt by regulation standards which would govern the plan administrator's selection of the annuity provider?

[15] Would such standards provide adequate protection to participants and beneficiaries in terminating plans?

Criteria for the Selection of Annuity Providers

The preceding section identified some regulatory approaches that the PBGC could adopt with respect to the selection by plan administrators of annuity providers. This section focuses upon the specific criteria that could form the content of any regulatory option that is chosen.

State Regulatory Requirements and Guaranty Programs

As discussed above, historically the regulation of insurance companies has occurred at the state government level. States have enacted various laws and regulations which are aimed at protecting policyholders against insurer insolvency through such mechanisms as financial examinations, requirements concerning the insurance company's levels of reserves and capital surplus, regulation of the insurer's investments, and guaranty fund coverage. It may therefore be appropriate for any regulation to consider the level of protection provided by state regulatory requirements and guaranty programs.

State regulatory requirements. Every state requires each insurer doing business within a state to submit to the state insurance commissioner an annual statement of its financial affairs. In an increasing number of states, insurers also are required to submit comprehensive annual audited financial reports to the state insurance department. State insurance departments are vested with the authority to examine the financial affairs of any insurance company doing business in the state. The states also conduct financial audits on a periodic basis of insurance companies that do business within their borders.

States historically have established minimum capital and surplus requirements that an insurance company must meet in order to be licensed to sell insurance within the state. State insurance law and regulations also regulate the methodologies by which the insurer's policy reserves and surplus are calculated. Such requirements are aimed at assuring that the insurance company's reserves, along with future premium payments and anticipated interest earnings, will enable the company to pay all future policyholder obligations on a timely basis. In some states, a qualified expert must provide a certification that the insurer's reserves have been correctly valued and are sufficient to provide for the company's financial obligations. New York, which is viewed by some as having among the strictest insurance regulation standards, requires an actuarial valuation that reserves are adequate to meet liability claims under a variety of interest rate scenarios.[7]

State insurance laws and regulations also regulate the form and amount of the investments that may be made by insurance companies. Permissible investments, as well as those which are prohibited, are set forth by statute. Many states have placed certain limitations upon the percentage of the insurer's assets that may be placed in a certain category of investment, most frequently with regard to investments in common and preferred stocks and real estate. Recently, as a result of concern about the decline of the high risk bond market, there has been legislative activity in the states with respect to limiting the percentage of the insurer's assets that may be held in bonds that are not rated as "investment grade" by bond rating organizations.

State guaranty programs. At the present time, state insurance departments are responsible for administering the liquidation of insolvent companies. In addition, forty-seven (soon to be 48) states and Puerto Rico have established guaranty programs, which are responsible for

[7] Insurance Department, State of New York, Regulation No. 126, "Valuation of Annuity and Single Premium Life Reserves" (1988). See also Insurance Department, State of New York, Regulation No. 128, "Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements" (1990).

paying policyholder obligations if the insurer becomes insolvent. The structure of the guaranty programs vary from state to state, but generally they are administered by an association composed of the insurance companies that do business within the state.

State guaranty programs that cover annuity policies are not funded in advance of an insurer's insolvency, but rather are financed on a post-assessment ("pay-as-you-go") basis. When an insurer becomes insolvent, other insurers are assessed certain amounts (generally based upon a percentage of the premiums they collect) that are used to pay the obligations to policyholders in insolvent companies. In some states, there is a cap (generally based upon premium volume) on the amount that can be assessed each year against an insurance company.

Most state guaranty programs have placed certain limitations upon the policyholder obligations that they cover. Most of the guaranty programs do not guarantee annuity policy obligations above a certain dollar amount per policyholder, usually $100,000.

State guaranty programs also typically have residency requirements. Generally, a state guaranty program will not cover obligations incurred by insurance companies that are not licensed to do business within the state. Further, even if the insolvent insurer is licensed to do business in the state, the state guaranty program may provide no or limited coverage to individuals who are not residents of the state at the time of the insurer's insolvency. The National Association of Insurance Commissioners ("NAIC") has proposed model legislation that provides for reciprocity among state guaranty programs with respect to residency requirements.

Requests for Comments

[16] Do state regulatory requirements, in combination with state guaranty programs (in the states where they exist), sufficiently assure that annuitants will receive the amounts promised to them under irrevocable annuity contracts?

[17] If state guaranty programs do not provide adequate protection, to what extent (if at all) is that the result of (a) a lack of adequate funding mechanisms and requirements for such programs; (b) residency requirements; (c) limitations upon the benefit amounts covered; and (d) other factors?

[18] In which particular states do (a) state regulatory requirements, and (b) state guaranty programs, serve as a model with respect to the protection they provide annuitants?

[19] Should any PBGC regulation concerning the selection of annuity providers take into account the strength of regulatory requirements and guaranty programs in the states where the plan administrator, insurer, or participants are domiciled? If so, should state requirements and guaranty programs be considered in conjunction with other requirements, or as an alternative to other requirements?

Ratings by Nationally Recognized Rating Services

There presently are several nationally recognized ratings services, such as A.M. Best Company, Inc. ("Best"), Duff & Phelps, Inc. ("Duff"), Fitch Investors Service, Inc. ("Fitch"), Moody's Investor's Inc. ("Moody's), and Standard & Poor's Corporation ("S&P"), which assess the financial strength and claims-paying abilities of insurance companies. The ratings services, which are operated by private-sector enterprises, generally will provide a rating at the request of an insurance company, for a fee. In some instances, however, the rating services will rate an insurance company on their own initiative. While the coverage of the insurance industry by nationally recognized ratings services is comprehensive, some insurance companies, typically of small to medium size, may not have received a rating or may have only a single rating from a rating service.

In rating insurance companies, the ratings services examine factors such as their profitability, capital adequacy, liquidity, claims-paying history, investment risks, and management quality. The assessment of these factors is based on financial statements filed by the insurance companies with state regulatory agencies, other financial information collected by the ratings services (including information obtained from sources that are non-public), meetings with the insurance company's management, and other sources. Although the methodologies the ratings services utilize for rating companies are basically similar, there are some differences among the services concerning their sources of information, the specific factors they consider in their assessments, and how they weigh those factors.

The ratings services assign specific rating classifications to the insurance companies they rate. The highest level of rating (e.g., A+ from Best, AAA from Duff, Fitch, and S&P, or Aaa from Moody's) is assigned to insurance companies that, in the opinion of the rating services, have achieved "superior" or "exceptional" financial security with respect to their policyholder and other contractual obligations. The second highest rating level (e.g., A from Best, AA from Duff, Fitch, and S&P, or Aa from Moody's) is assigned to insurance companies that have "excellent" or a "very high" financial strength or claims-paying ability. The third highest rating level (A from Best, and A from Duff, Fitch, Moody's, or S&P) is assigned to companies that have a "good," "high," or "strong" claims-paying ability, but nevertheless are susceptible to risk if adverse economic conditions or underwriting changes occur in the future. A rating below the level of "A" denotes a lower level of financial security and indicates that the claims-paying ability of the insurance company may be speculative with respect to future obligations. Insurance companies that are facing liquidation under state insolvency proceedings are assigned a rating level below the level of "C" or are not assigned a rating by the rating services.

If the PBGC were to adopt additional regulatory requirements concerning the selection of annuity providers, one alternative would be for the PBGC to base its regulatory requirements at least in part upon the ratings issued by nationally recognized ratings services. For example, plan administrators or independent experts employed by them might be required to consider ratings by designated nationally recognized ratings services in making their selection or recommendation for an annuity provider. Another option would be for the PBGC to establish standards based upon ratings from the ratings services that a plan administrator would be required to satisfy in selecting an annuity provider. The utilization of ratings services has certain advantages, since they have developed expertise in assessing the financial strength of insurance companies, and their ratings have obtained a certain level of acceptance in the marketplace. However, before taking any regulatory action, the PBGC would like to obtain public comment.

Requests for Comments

[20] Do the ratings by nationally recognized rating services provide a sufficiently reliable assessment of an annuity provider's capacity to meet the obligations of its irrevocable annuity contracts?

[21] How current is the information upon which the ratings are based, and how often are the ratings updated? Does the frequency with which the ratings are updated have an effect upon their reliability concerning the annuity

provider's capacity to meet its annuity obligations?

[22] If the PBGC were to issue standards governing the plan administrator's selection of annuity providers, should such standards be based on the ratings from rating services? If so, which particular ratings services should be used:

(a) Are there any significant differences among ratings services, such as Best, Duff, Fitch, Moody's, and S & P, with respect to whether their ratings are reliable measures of the ability of insurance companies to meet their obligations under irrevocable annuity contracts?

(b) How equivalent are the ratings levels assigned by the various ratings services (e.g., is an A rating from Best, an AA from Duff, Fitch, and S & P, and an Aa from Moody's essentially an equivalent measure of an insurance company's financial security), or for example, as has been suggested, does a rating of A+ from Best's essentially cover companies whose financial strength would be rated as either AAA, Aaa, AA, or Aa by the other services?

[23] If the PBGC were to issue standards based on ratings, should the ratings be used as the sole standard, or should they be used in conjunction with other criteria which relate to the financial soundness of the insurer?

[24] If standards based on ratings are issued:

(a) What particular levels or combinations of levels of ratings from the rating services should the PBGC require? For example, should the required rating level be the highest (e.g., AAA from Duff, Fitch, or S & P, Aaa from Moody's, or A+ from Best), second highest (e.g., AA from Duff, Fitch, or S & P, Aa from Moody's, or A+ or A from Best), or the third highest (e.g., A from Duff, Fitch, Moody's, or S & P, or A or A— from Best)?

(b) How many ratings should be required and should this requirement depend on the size of the insurer?

(c) How should "watchlist" and "contingent" ratings be treated?

[25] Should any standards that are promulgated by the PBGC require that the insurance company be given an acceptable rating from all the ratings services that rate it?

[26] If minimum standards based on ratings were adopted, should an insurance company be required to have maintained the specified rating or a higher rating for a specific number of years, and, if so, how many?

[27] If a rating is required to have been maintained for a particular number of years to meet a ratings-based minimum standard, what, if any, exceptions should be considered for new or previously unrated insurance companies, including newly established subsidiaries of rated-parent insurance companies?

Other Criteria Concerning Financial Security

As discussed above, under state regulatory schemes insurance companies must satisfy various financial requirements, including those related to the company's reserves, its capital surplus, its type of investments, and other criteria concerning its financial condition. However, there may be wide differences among states in the degree to which such regulatory requirements protect annuity policyholders against potential financial loss. It also might be administratively impractical for the PBGC to base regulatory requirements upon state requirements, particularly in light of the variation in state regulatory practices and the possibility that in some plans the plan administrator, the annuity provider or providers, and the pension plan participants may be domiciled in different states. An appropriate regulatory option thus might be for the PBGC to develop independent criteria for the selection of the insurer. Such criteria might be comprised of objective measures of the insurer's financial security that would not be difficult for plan administrators or their consultants to apply in making annuity provider selections, or for the PBGC to apply in reviewing those selections.

Requests for Comments

[28] Should the PBGC develop its own criteria for the selection of annuity providers based upon the insurer's reserves, surplus, type of investments, and other similar measures of the financial security of the insurer? If so, what should the criteria include?

[29] If specific criteria for the selection of annuity providers are established, should such criteria comprise the entire regulatory requirement, or should they be used in conjunction with other considerations such as ratings from nationally recognized ratings services?

[30] If specific criteria are established, should the PBGC require a certification from a qualified expert (in accordance with state law, if state law provides for a financial valuation of the insurer's assets and liabilities) to authenticate that the insurer meets these criteria?

[31] If specific criteria are established, under what circumstances, if any, should a plan be permitted to purchase annuities from providers that do not meet specified requirements?

Reinsurance, Credit Enhancement, and Other Risk and Cost Sharing Arrangements in the Insurance Industry

Reinsurance is the process whereby insurance companies spread their risk by transferring portions of specific policy liability to other insurance companies in return for their receiving part of the premiums or other payments. For reinsurers, reinsurance provides an opportunity to share for a fee in the business generated by other companies, without the responsibility for developing customers and handling claims. Issuers of annuity contracts who obtain reinsurance are benefited because reinsurance reduces their risk on specific contracts.

There may be other cost and risk sharing arrangements that exist both formally and informally within the insurance industry. In order to strengthen the financial soundness of annuity contracts it sells, an insurer might obtain a guarantee supporting all of its annuity obligations or a limited segment of its annuity business. This form of credit enhancement occurs in other types of financial transactions, but the PBGC does not know whether it is common with respect to the sale of annuities. The PBGC is interested in learning more about reinsurance, credit enhancement, and other risk and cost sharing arrangements within the insurance industry, and whether such arrangements provide protection to annuity policyholders in the event that the insurance company that issues the annuity contract fails.

Requests for Comments

[32] To what extent do reinsurance and other formal and informal risk and cost-sharing arrangements exist among insurance companies with respect to annuity contracts?

[33] What protection do such existing risk and cost-sharing arrangements provide to annuitants?

[34] To what extent, and in what manner, should such risk and cost-sharing arrangements be considered in any regulations the PBGC may issue concerning the selection of annuity providers?

Impact of Possible PBGC Regulatory Activity

The purpose of any regulatory activity by the PBGC concerning the selection of annuity providers is to provide protection to pension plan participants with respect to the financial soundness of any irrevocable annuity contracts that may be purchased for them upon the termination of their pension plan. However, the PBGC recognizes that any

regulation of the plan's annuity selection decision may have a substantial impact upon plan sponsors, annuity providers and policyholders, plan participants and beneficiaries, other federal and state government agencies, and other parties involved in the operation of the private sector pension system. For example PBGC regulation could have the effect of reducing the number of qualified providers that could sell annuities to pension plans, thereby concentrating competition within the insurance industry or within the annuity products segment of it. PBGC regulation could also have the impact of increasing prices and decreasing the availability of annuities for both pension plans and other purchasers of annuity contracts.

To the extent appropriate, the PBGC is interested in minimizing any detrimental impact its regulation would have upon such parties. Any regulatory action the PBGC may take should be consistent with the overall policy of the SEPPAA amendments to ERISA's plan termination insurance program, which is to reduce the PBGC's oversight role with respect to cases where plan assets are sufficient for benefit liabilities, while simultaneously establishing clear and objective criteria for those terminations and giving plan participants a number of tools to enable them to enforce their statutory rights upon plan termination.

Requests for Comments

[35] For the regulatory options identified in this Advance Notice, the PBGC requests cost/benefit data and comment concerning the impact of those options upon the parties involved in the pension system and the public.

[36] If there are other regulatory approaches concerning the selection of annuity providers that the PBGC could adopt that would provide protection to pension plan participants and beneficiaries while minimizing possible detrimental effects of regulation, the PBGC requests cost/benefit data and comment concerning those approaches.

Conclusion

The PBGC invites comments on the issues discussed in this notice, including specific suggestions as to how regulatory activity by the PBGC might address these issues. As discussed above, the PBGC requests that such comments refer to the question number or numbers listed in this notice.

Issued at Washington, DC on this 17th day of June, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–14834 Filed 6–20–91; 8:45 am]

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federal register

Friday
June 21, 1991

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 33
Federal Acquisition Regulation; General Accounting Office Protest Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAR Case 91-41]

Federal Acquisition Regulation; General Accounting Office Protest Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Federal Acquisition Regulation (FAR) 33.104 to provide that, pending a judicial resolution of the constitutionality of 31 U.S.C. 3554(c), the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. Pending a judicial determination, agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 22, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR Case 91–41 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501–3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 91–41.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3554(c) of the title 31, United States Code, which was enacted as part of the Competition in Contracting Act of 1984 ("CICA" or "the Act"), purports to authorize the Comptroller General to make binding awards of attorneys' fees and bid preparation costs to successful bid protesters, and to require the Federal agencies concerned to pay such awards promptly out of funds available to or for their use for procurement purposes (the "costs and fees" provision). See 31 U.S.C. section 3554 (c)(1)(2), enacted as part of the Deficit Reduction Act of 1984, Public Law No. 98–369, tit. VII, section 2741, 98 Stat. 494. 1057, 1202 (1984). In his signing statement, President Reagan noted that this provision raised serious constitutional questions and asked the Department of Justice to inform Executive Branch agencies how they might comply with the Act in a manner consistent with the Constitution. See 20 Weekly Comp. Pres. Doc. 1037 (July 18, 1984). The Department of Justice has concluded that the cost and fees provision is unconstitutional as a violation of the separation of powers required by the Constitution.

In *INS* v. *Chadha,* 462 U.S. 919 (1983), the Supreme Court held that, except in certain constitutionally prescribed procedures such as impeachment, Congress may "alter[] the legal rights, duties and relations of persons * * * outside the legislative branch" only through the ordinary legislative process, including bicameralism and presentment to the President. *Id.* at 952. In *Bowsher* v. *Synar,* 478 U.S. 714, 732 (1986), the Court held that "because Congress has retained removal authority over the Comptroller General, he may not be entrusted with executive powers." The Court in *Bowsher* then concluded that under the statute in question, the Comptroller General's role "plainly entail[ed] execution of the law in constitutional terms," because the statute required the President to take actions that the Comptroller General believed were necessary under the statute. The Court reasoned that "[i]nterpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Id.* at 732–33. Accordingly, the Court held that the role assigned to the Comptroller General by the statute was unconstitutional.

In light of *Chadha* and *Bowsher,* it seems clear that CICA's costs and fees provision is unconstitutional. Under the provision, when "the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation," he may declare that the bid protester is entitled to recover its bid protest costs and attorneys' fees from the Executive Branch procuring agency. 31 U.S.C. 3554 (c). This provision purports to vest the Comptroller General with executive power because he is "[i]nterpreting a law enacted by Congress to implement the legislative mandate," *Bowsher,* 4789 U.S. at 733, and his action has "the purpose and effect of altering the legal rights, duties, and relations of persons * * * outside the Legislative Branch," *Chadha,* 462 U.S. at 952. As the Comptroller General may not exercise executive power, the provision violates the constitutional principle of separation of powers.

The proposed rule would amend the FAR regulations, 48 CFR 33.104, to provide that, pending a judicial resolution of the constitutionality of 31 U.S.C. 3554(c), the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. In the interim, agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies, but this rule would provide notice that such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional.

B. Regulatory Flexibility Act

The proposed changes to FAR part 33 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because the proposed rule, if implemented, may impose different requirements on both Federal agencies and contractors when GAO recommends award of protest costs. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 91–41) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement; General Accounting Office protest costs.

Dated: June 18, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 33 be amended as set forth below:

1. The authority citation for 48 CFR part 33 continues to read as follows:

PART 33—PROTESTS, DISPUTES, AND APPEALS

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Section 33.104 is amended by revising paragraphs (g) and (h) to read as follows:

§ 33.104 Protests to GAO.

* * * * *

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation, if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g)) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional.

[FR Doc. 91–14910 Filed 6–20–91; 8:45 am]

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federal register

Friday
June 21, 1991

Part V

Department of the Interior

Minerals Management Service

Final Leasing Notice, Outer Continental Shelf Mining Program; Norton Sound Lease Sale; Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Final Leasing Notice, Outer Continental Shelf Mining Program; Norton Sound Lease Sale

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356 (1988)), and the regulations issued thereunder (30 CFR Part 281).

2. *Filing of Bids.* The Minerals Management Service (MMS) is proposing to lease rights to gold and any other mineral recovered with gold or other mineral recovered using technology similar to that used in recovering gold. Sealed bids will be received by the Regional Director (RD), Alaska OCS Region, MMS, Room 544, 949 East 36th Avenue, Anchorage, Alaska 99508–4302. Bids may be delivered in person to that address daily from 8:00 to 4:00 p.m., Alaska Standard Time (a.s.t.), until the Bid Submission Deadline at NOON, July 23, 1991. Bids received by the authorized officer later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the authorized officer prior to NOON, July 23, 1991. Bids may not be withdrawn unless written withdrawal is received by the authorized officer prior to 8:30 a.m., July 24, 1991. Bid Opening Time will be 9 a.m., July 24, 1991, at Alaska OCS Region, MMS, 949 East 36th Avenue, Room 601, (6th floor conference room), Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 281. Bidders are directed to 30 CFR 281.4 and 281.20 for instructions on submitting bids for this sale. In addition, a bidder's information packet is available from the MMS (at the above address), which contains forms described in this notice which bidders must complete and a copy of the MMS bid adequacy review procedures.

3. *Method of Bidding.* A separate bid in a sealed envelope labeled "Sealed Bid for OCS Mining Program Norton Sound Lease Sale (insert Official Protraction Diagram number(s) and name(s), if applicable, and block number(s)), not to be opened until 9 a.m., a.s.t., July 24, 1991," must be submitted for each block or prescribed bidding unit bid on. For those blocks which must be bid on as a bidding unit, it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid 10 percent of the cash bonus, in cash or by Federal Reserve check, commercial check, bank draft, money order, certified check, or cashier's check, made payable to "Department of the Interior—Minerals Management Service." No bid for less than all of any block or bidding unit as described in paragraph 12 will be considered. A sample bid form is reproduced at the end of this Notice.

Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Bidders are warned against violations of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $10 or more per hectare or fraction thereof. All leases awarded will provide for a yearly rental payment of $2.50 per hectare or fraction thereof, commencing upon lease execution. All leases will provide for a minimum royalty of $2.50 per hectare or fraction thereof. A cash bonus/fixed royalty bidding system with a royalty rate of 5 percent will be employed on all blocks or bidding units offered in this sale.

In the event the highest bids on a block or bidding unit are tied, the tied bidders may submit a supplemental sealed bid and include 10 percent of the cash bonus of the supplemental sealed bid in the same manner and location as stated in paragraph 3 of this Notice. The bidders will have up to a maximum of 4 hours from the announcement of tie bids to submit the supplemental sealed bid. The time of bid closing will be announced at the sale site, after conferring with eligible bidders. Bidders may not submit supplemental sealed bids lower than their previous offer. Supplemental sealed bid opening and reading will commence approximately 15 minutes from the supplemental sealed bid closing in the MMS Sixth Floor Conference Room at 949 East 36th Avenue, Anchorage, Alaska. Bidders will not be allowed to withdraw any tie bids during or after the period for submitting supplemental sealed bids. If after reading the supplemental sealed bids there is again a tie, the process for determining the highest cash bonus bidder will be repeated. If a tied bidder declines to submit a higher supplemental sealed bid their previous bid will be considered final. If none of the tied bidders choose to submit a higher supplemental bid, all tie bids will be rejected. The Secretary retains the right to reject any and all sealed bids received for any tract, regardless of the amount offered.

5. *Equal Opportunity.* Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985). See Affirmative Action paragraph under "Information to Lessees" (ITL) No. a.

6. *Bid Opening.* Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, Federal Reserve check, commercial check, bank draft, money order, certified check, or cashier's checks, submitted with a bid may be deposited by the Government during the period the bids are being considered for acceptance or rejection. Such a deposit does not constitute and shall be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks or Portions Thereof.* The United States reserves the right to withdraw any blocks or bidding units or portions thereof from this sale prior to issuance of a written acceptance of a bid for the block or bidding unit.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any blocks or bidding units will be awarded to any bidder, unless:

a) the bidder has complied with all requirements of this Notice and applicable regulations;

b) the bid is the highest valid bid; and

c) the amount of the bid has been determined to be adequate by the authorized officer.

There is an administrative minimum cash bonus bid of $10 per hectare or fraction thereof. However, no bid will be accepted unless the authorized officer has determined such offer to be adequate compensation for the rights conveyed. The high bid for each block or bidding unit must satisfy the Government's criteria for bid adequacy. Any bid submitted which does not

conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental for each lease issued, by electronic funds transfer (EFT) in accordance with the requirements of 30 CFR 218.155. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of notice of bid acceptance. The term "business day" is defined as a day on which the Alaska OCS Region office is open for business.

11. *Official Protraction Diagrams (OPD).* Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased for $2 each from the Records Manager, Alaska OCS Region, Room 502, at the first address stated in paragraph 2 of this Notice. A page-size map of the sale area is reproduced at the end of this Notice.

Outer Continential Shelf Official Protraction Diagrams:

NQ 3–7—Nome (Revised September 27, 1988)

NQ 3–8—Solomon (Revised September 27, 1988)

12. *Description of the Areas Offered for Bids.*

(a) Categories of blocks listed under OPD's:

The lease sale area offered for bids is listed by OPD. Two categories of blocks appear under each OPD listed: (1) whole blocks and (2) blocks which comprise bidding units.

Whole blocks fall entirely under the jurisdiction of the Federal Government. Each whole block must be bid on separately. The hectarage amount for whole blocks listed in this paragraph are 2,304.00 hectares.

Bidding units are a combination of portions of adjacent blocks. All parts of a bidding unit must be bid on together.

The letter symbol "D" appearing next to block numbers identifies a block or portion of a block where a jurisdictional dispute between the Federal and State Governments is pending before the United States Supreme Court, *United States of America v. State of Alaska,* No. 118, Original. Nothing in this Notice shall affect or prejudice the legal position of the United States in this case.

(b) The following blocks or portions of blocks are offered for bids:

Official Protraction Diagram NQ 3–7, Nome (revised September 27, 1988):

(1) Whole blocks: 641–643, 687–689.

(2)Bidding units:

Blocks	Hectares
552	1895.99
596	2304.00
Total Hectares	4199.99
553	1282.31
597	2304.00
Total Hectares	3586.31
554 D	30.91
555 D	65.69
599 D	198.70
Total Hectares	295.30
554	566.15
598	2304.00
Total Hectares	2870.15
555	0.04
599	1999.73
Total Hectares	1999.77
600	1545.55
644	2304.00
Total Hectares	3849.55
601	775.67
602	69.74
645	2304.00
Total Hectares	3149.41

Official Protraction Diagram NQ 3–8, Solomon (revised September 27, 1988):

(1) Whole blocks: 578–581 and 621.

(2)Bidding units:

Blocks	Hectares
490	0.59
534	1734.05
Total Hectares	1734.64
491	529.13
535	2304.00
Total Hectares	2833.13
492	1135.99
536	2304.00
Total Hectares	3439.99
493	1189.15
537	2304.00
Total Hectares	3493.15
533	436.36
577	2278.06
Total Hectares	2714.42

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have a primary lease term of 20 years. Leases will be issued on Forms MMS–2004 (July 1990). Copies may be obtained from the Alaska OCS Region at the address stated in paragraph 2 of this Notice.

(b) The following stipulations will be included in each lease resulting from the sale.

Stipulation No. 1.—Environmental Survey and Monitoring Program and Operations Management. The lessee is required to conduct environmental surveys. The survey plan will address water quality, EPA priority trace metals, and the presence, distribution, and composition of biological communities including organisms such as marine mammals, red king crabs, etc. The lessee also is required to conduct environmental monitoring to identify existing conditions and any trends or changes resulting from the mining activity. The environmental monitoring program will address measurement of trace metal concentrations in the water and sediment; bioaccumulation of trace metals in selected organisms such as mollusks, fish, marine mammals and the arctic peregrine falcon; turbidity and sedimentation; pre- and postmining bathymetric contours; and rate of recolonization of benthic communities. The Environmental Survey and Monitoring Program, including quality control, will be approved and monitored by the Regional Supervisor, Field Operations (RS/FO) as part of the testing or mining plan. The lessee will submit to the RS/FO an annual report with the results of the Environmental Survey and Monitoring Program including trends in trace-metal accumulation in selected monitored organisms. The report will be used by the RS/FO in coordination with appropriate State and Federal agencies to determine if any modification or suspension of operations is necessary to protect the biological resources. If it is determined that testing, mining, or processing activities are contributing to significant adverse effects from (1) an increase in trace metals in the selected marine organisms; (2) habitat alteration; or (3) water-quality degradation, the RS/FO, in consultation with the Environmental Protection Agency (EPA) and the State of Alaska, will determine what regulatory action is necessary and will order modification or suspension of activities, as appropriate. Recognizing that marine discharges, including the discharge of dredged materials, are subject to regulation by the EPA, MMS will coordinate the requirements for the Environmental Survey and Monitoring

Program with EPA. The Environmental Survey and Monitoring Program will be evaluated at least once a year and the program may be modified, as appropriate, based on the results of prior surveys and other available information. The lessee shall notify the RS/FO of exceedances of EPA water-quality criteria within 24 hours of becoming aware of such exceedances.

The EPA has the authority to impose requirements on the lessee through the National Pollutant Discharge Elimination System (NPDES) permit process, in addition to those required under the Environmental Survey and Monitoring Program.

Stipulation No. 2—Prohibition of Use of Mercury or Other Toxic Substances in Processing. The lessee shall not store or use mercury or any other toxic substance for testing and/or the beneficiation of placer minerals onboard the dredging vessel, or any other vessel or offshore structure directly associated with dredging operations.

(Beneficiation means: 1. The dressing or processing of ores for the purpose of [a] regulating the size of a desired product, [b] removing unwanted constitutents, and [c] improving the quality, purity, or assay grade of a desired product. 2. Concentration or other preparation of ore for smelting by drying, flotation, or magnetic separation.)

Stipulation No. 3—Baseline and Monitoring Studies on Mercuery Levels in Humans. The lessee will be required to monitor human health in a manner approved by the Regional Supervisor, Field Operations (RS/FO) if baseline information collected by the MMS or other Federal, State, or regional health agency indicates potential human health problems associated with mercury, and if site-specific environmental survey and monitoring or other information indicates lease activities may contribute to mercury levels adversely affecting human health. The RS/FO may require that monitoring of human health begin at the commencement of mining operations. The lessee will coordinate the preparation of any such human health monitoring program with appropriate Federal and State health agencies prior to submitting it to the RS/FO. For purposes of this stipulation, human health will be considered adversely affected by lease activities if they contriubte to mercury levels in humans which closely approach or are at the safety levels established by the World Health Organization. The results of any human health monitoring will be used by the RS/FO in coordination with appropriate Federal and State agencies to determine if any modifications or suspension of operations are necessary to protect human health. If it is determined that lease activities are adversely affecting human health, the RS/FO, in consultation with the Environmental Protection Agency and the State of Alaska will determine what action is necessary and will require modification or suspension of activities as appropriate. Following the initiation of human health monitoring, the RS/FO will evaluate annually for at least 2 years, and as frequently thereafter as appropriate, the need to continue monitoring human health. The annual and any subsequent reviews will be made in coordination with other appropriate Federal, State, and local health agencies. Based on the results of such reviews and monitoring or other information, the RS/FO may require that the monitoring program be modified or eliminated.

Stipulation No. 4—Protection of Archaeological Resources.

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (Section 301[5], National Historic Preservation Act, as amended, 16 U.S.C. 470w[5]). "Operations" means any drilling, mining, or construction, or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RS/FO), believes an archaeological resource may exist in the lease area, the RS/FO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RS/FO, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RS/FO for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RS/FO that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RS/FO. A report on the investigation shall be submitted to the RS/FO for review.

(3) If the RS/FO determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RS/FO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RS/FO has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RS/FO. The lessee shall make every reasonable effort to preserve the archaeological resource until the RS/FO has told the lessee how to protect it.

Stipulation No. 5—Agreement Between the United States of America and the State of Alaska.

This stipulation applies to the following blocks or portions of blocks referred in this Notice as disputed: NQ 3–7, Nome, blocks 554D, 555D, and 599D.

This lease is subject to the "Agreement between the United States of America and the State of Alaska Pursuant to Section 7 of the Outer Continental Shelf Lands Act and Alaska Statutes 38.05.137 for the Leasing of Disputed Blocks in Federal Outer Continental Shelf Mining Program, Norton Sound Lease Sale" (commonly referred to as the "Agreement"), and the lessee hereby consents to every term of that Agreement. Nothing in that Agreement or this Notice shall affect or prejudice the legal position of the United States in *United States of America* v. *State of Alaska,* No. 118, Original.

Any loss incurred or sustained by the lessee as a result of obtaining validation and recognition of this lease pursuant to the "Agreement," and in particular any loss incurred or sustained by the lessee as a result of conforming this lease with any and all provisions of all applicable laws of the party prevailing in *United States of America* v. *State of Alaska,* United States Supreme Court No. 118, Original, shall be borne exclusively by the lessee.

No taxes payable to the State of Alaska will be required to be paid with respect to this lease until such time as ownership of or jurisdiction over the lands subject to this lease is resolved. In the event that the lands subject to this lease or any portion of them are judicially determined to be State lands,

the lessee shall pay to the State a sum equivalent to the State taxes which would have been imposed under Alaska law if the lands, or portion thereof determined to be State lands, had been undisputed State lands from the date the lease was executed, plus interest at the annual legal rate of interest provided under Alaska law accruing from the date the taxes would have become due under Alaska law. Such payment shall be in lieu of, and in satisfaction of, the actual State taxes.

14. *Information to Lessees*

(a) *Affirmative Action Requirements.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 16 of the lease form (Form MMS–2004, July 1990) would be deleted from leases resulting from this sale. In addition existing stocks of the affirmative action forms contain language that would be superseded by revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) *Unitization.* Provision for the consolidation of two or more OCS mineral leases into a single mining unit is at 30 CFR 282.11(d)(1). The lessee may request consolidation or the Director may require consolidation of operations if it is determined to be in the interest of conservation of the natural resources of the OCS or for the prevention of waste. A mining unit may consist of all or portions of the OCS mineral leases with all or portions of adjacent State lease(s) in a common ore body. Minerals produced from consolidated State and Federal leases shall be accounted for separately unless otherwise approved by the Director and an appropriate State official.

(d) *Postlease Norton Sound Review Team.* Lessees are advised that, as provided in 30 CFR 282.4, a Postlease Norton Sound Review Team will be established to provide opportunity for representatives from Federal and State agencies and local governmental organizations to review proposed postlease OCS mining activities. The Review Team will also provide a forum for the exchange of information relating to mining activities. The Review Team will review proposed OCS Delineation, Testing, and Mining Plans and National Pollutant Discharge Elimination System permits, including any associated environmental survey and monitoring plans required by regulation (30 CFR 282), permit, or lease stipulations, and subsequent results.

The Review Team will be established in lieu of continuing the Prelease Coordination Team.

(e) *Bird and Marine Mammal Protection.* Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to, among others, the provisions of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.); the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 et seq.); and applicable International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws and treaties. With respect to endangered species and marine mammals, disturbance could be determined to constitute a "taking" situation. Under the ESA, the term "take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct." Under the MMPA, "take" means "harass, hunt, capture, or kill, or attempt to harass, hunt, or kill any marine mammal." Violations under these Acts and applicable Treaties may be reported to the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS), as appropriate.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Under the MMPA, the NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus; the FWS is responsible in Alaskan waters for the polar bears, sea otters, and walrus. Procedural regulations implementing the provisions of the MMPA are found at 50 CFR part 18.27 for FWS, and at 50 CFR part 228 for NMFS.

Lessees are advised that specific regulations must be applied for and in place and the Letters of Authorization must be obtained by those proposing the activity to allow the incidental take of marine mammals whether or not they are endangered or threatened. The regulatory process may require 1 year or longer.

Of particular concern is disturbance at major wildlife concentration areas, including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration areas in the lease area are available from the Regional Supervisor, Field Operations. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintain at least a 1-mile horizontal distance and aircraft maintain at least a 1,500-foot vertical distance above known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas.

For the protection of endangered whales and marine mammals throughout the lease area, it is recommended that all aircraft operators maintain a minimum 1,500-foot altitude when in transit between support bases and exploration sites. Lessees and their contractors are encouraged to minimize or reroute trips to and from the leasehold by aircraft and vessels when endangered whales are likely to be in the area. Human safety should take precedence at all times over these recommendations.

(f) *Arctic Peregrine Falcon.* Lessees are advised that the arctic peregrine falcon (*Falco peregrinus tundrius*) is

listed as threatened by the U.S. Department of the Interior and is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Peregrines are generally present in the vicinity of the sale area from April to September and are most disturbed by human activities near nest sites. There are 20 known nest sites along the northern shore of Norton Sound (from Cape Prince of Wales to Unalakleet) and six sites are located near the sale area. The conduct of OCS mining activities will not conflict with arctic peregrine falcons if the activities are located away from known nest sites. The lessee should contact the Fish and Wildlife Service (FWS) (Fish and Wildlife Enhancement Office, Fairbanks, Alaska) for information and protection criteria for the known nest sites of arctic peregrine falcons. The FWS will review delineation, testing, and mining plans submitted by lessees to the MMS and therefore the lessee should include arctic peregrine falcon protection measures as part of their plans. The FWS review may determine that certain restrictions could apply to further protect arctic peregrine falcon habitats. Lessees should advise their contractors and/or operators of the protection measures to further assure the protection of the arctic peregrine falcon.

(g) *Subsistence Activities.* Federal and State policies recognize subsistence as a priority use of wildlife resources. Lessees are therefore advised that operations should be conducted so as to avoid unnecessary interference with subsistence harvests. Consideration should be given to species harvested during the open-water season (from mid-May to mid-November) as follows:

1. From the beginning of June through September: marine fish, including salmon, smelt, and herring are harvested along the coast adjacent to the entire sale area and from the beginning of October through May tom cod are harvested along the coast adjacent to the entire sale area.

2. From the beginning of December to the end of June and from the beginning of mid-August to October: seals are harvested in the entire sale area.

3. From the beginning of April through the end of June: walruses are harvested in the entire sale area.

4. From mid-April through the beginning of November: waterfowl are harvested throughout the sale area.

Industry is encouraged to consult with local village and regional organizations, including the Eskimo Walrus Commission, Nome Eskimo Community, Sitnasuak Native Corporation, King Island Community, Kawerak Inc., Bering Straits Native Corporation, and the Bering Straits Coastal Management Program during all delineation, testing, and mining activities to minimize disturbance of subsistence activities.

(h) *Coastal Zone Management.* Lessees are advised that activities described in delineation, testing, and mining plans under leases resulting from this sale that may affect land or water uses in the coastal zone are subject to State coastal consistency review pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act.

Lessees are encouraged to consult and coordinate early with State and local agencies involved in coastal management review while preparing delineation, testing, and mining plans to ensure that they are fully aware of policies and requirements of the Alaska Coastal Management Program and approved local coastal management programs (CMP's). The City of Nome, Cenaliulriit and Bering Straits Coastal Resource Service Area CMP's have been approved by the State and Federal Governments.

(i) *Bonds and Leasing Requirements.* Lessees are directed to the requirements of 30 CFR 281.33 and 30 CFR 282.40. Prior to the commencement of any activity on a lease, the lessee shall submit a surety or personal bond as described in 30 CFR 282.40. Prior to the approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

(j) *Clean Air Act Amendments of 1990.* Under Section 801 of the Clean Air Act Amendments of 1990 (104 Stat. 2685 to be codified at 42 U.S.C. 7627), EPA has the authority and responsibility for regulating air pollution sources on the OCS. Lessees should contact the EPA regarding appropriate requirements specific to their operations.

15. *Reservations to the United States.* The United States reserves the rights to oil, gas, sulphur, and salt deposits, and sand and gravel deposits.

16. *Addendum to Lease.* The following will be incorporated into the lease.

Royalty Due on Production Schedule Pursuant to Section 5 of Lease.

The lessee shall pay to the lessor a royalty of 5 percent of the value of any and all gold concentrates and other minerals produced (sold, transferred, used, or otherwise disposed of) at the point of shipment to market, such point of shipment to be the mine site or dredging/processing point, as the case may be. The gold concentrates may consist of associated valuable minerals other than placer gold. Associated minerals may include, but are not limited to, silver, garnet, rare earths, zircon, barite, ilmenite, magnetite, chromite, platinum, scheelite, cassiterite, monazite, xeonotime, wolframite, and gem stones. For royalty purposes, the value shall be the gross proceeds received by the lessee for the disposition of the gold concentrates and associated valuable minerals produced from leased lands. Gross proceeds shall be:

(1) The price paid the lessee under bona fide transactions with independent parties for concentrates and other minerals produced from the leased lands, less the lessee's actual reasonable cost of transportation for lease production from the mine or dredging/processing point to the smelter, refinery, or point of first sale, or

(2) When concentrates are processed for lessee's account at its own (captive) or any other smelter or refinery, such gross proceeds shall be determined by the price received for gold and associated minerals sold by the lessee in bona fide transactions with independent third parties for the month or period less all of the lessee's costs and charges during such period in connection with the lessee's shipping, smelting, refining, and handling of lease production and less an allowance for freight thereon from the treating smelter or refinery to destinations to which gold bullion, refined gold, and other associated valuable minerals were shipped by lessee.

Lessee shall pay lessor royalty within 30 days after the end of the month in which the lessee receives payment from the buyer. In the event there is a provisional settlement between the lessee and the buyer, lessee shall pay lessor within 30 days after the end of the month in which lessee receives provisional payment, such royalty payment to be adjusted within 30 days after the end of the month in which lessee and the buyer reach final settlement. Following the month in which final settlement(s) is reached, the lessor shall require the payment of such additional royalties, or allow such credits or refunds as may be necessary to adjust royalty payment to reflect the actual gross proceeds.

In any event, the lessor expressly reserves the right to take in kind, as and for full payment of the royalty hereunder, that percentage of the concentrates produced from the leased lands equal to the percentage of the royalty rate in effect at the time the lessor elects to exercise such right; provided, however, that the lessee shall not be required to hold such royalty

production in storage for a longer period than 30 days after the end of the calendar month in which such concentrates are produced and shall suffer no unreasonable inconvenience as a result of the exercise by the lessor of such right, and provided further that the lessee shall in no manner be held liable or responsible for loss, damage, or destruction of such concentrates caused without fault of the lessee while in such storage. A copy of all contracts for the sale or smelting/refining and shipping of concentrates produced from the lease must be furnished to the Director or designated authorized officer.

Sec. 25. *Royalty Valuation.* Should the valuation provisions contained herein be determined by the Director to be inappropriate, the Director shall determine a reasonable value in accordance with applicable regulations at 30 CFR 281 (1989).

Dated: June 18, 1991.

Albert L. Modiano,

Deputy Director, Minerals Management Service.

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SAMPLE BID FORM

(Bidders are advised that the following information must be included for each whole block or bidding unit bid on. However, any format may be used.)

Minerals other than Oil, Gas, and Sulphur

OPD Number	OPD Name	Block Number(s)	Total Amount of Bid	Amount Per Hectare	Amount Submitted with Bid (10 percent of Total Bid)

Bidder Qualification No. (Bidder needs to establish qualifications pursuant to 30 CFR 281.20.)	Proportionate Interest of Company Submitting Bid	Name and Address of Bidding Company

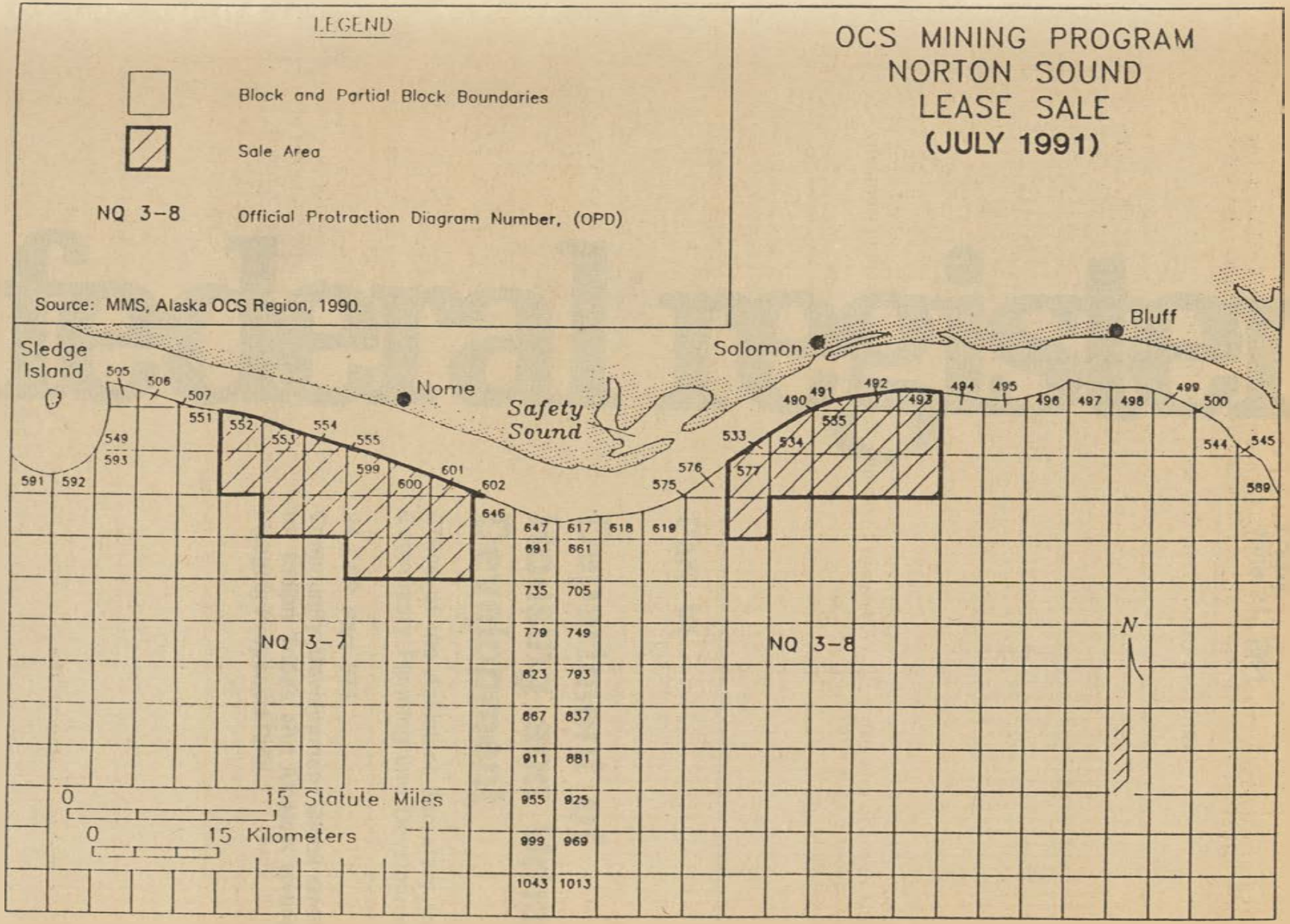
Authorized signatory's name and title

Bidder Qualification No. (Bidder needs to establish qualifications pursuant to 30 CFR 281.20.)	Proportionate Interest of Company Submitting Bid	Name and Address of Bidding Company

Authorized signatory's name and title

Bidder Qualification No. (Bidder needs to establish qualifications pursuant to 30 CFR 281.20.)	Proportionate Interest of Company Submitting Bid	Name and Address of Bidding Company

Authorized signatory's name and title



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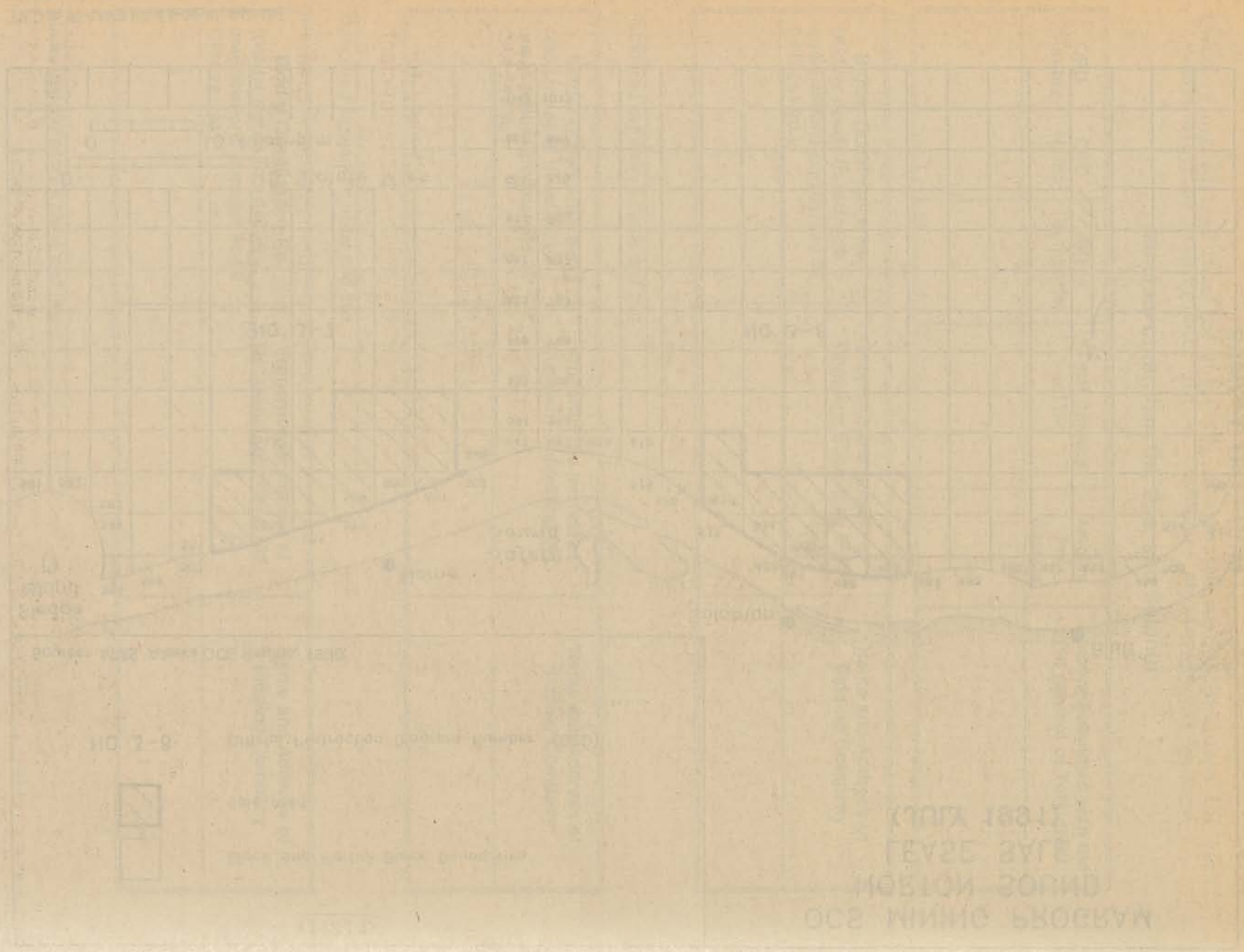

federal register

Friday
June 21, 1991

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-91-1530; FR-2880-P-01]

RIN 2506-AB12

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the Community Development Block Grant Program for Indian Tribes and Alaskan native villages. The amendments incorporate new policies and procedures. The most substantial change is the use of new selection criteria which would replace the "quality" and "impact" factors by which applications currently are rated and ranked. Other changes include: (1) An increase to 70 percent in the overall benefit to low- and moderate-income persons in the use of all but imminent threat grant funds; (2) guidelines for breaking ties among competing applications; (3) an additional component under Housing: "new construction"; (4) separate Community Facilities or Public Services categories: "infrastructure"; "buildings"; and "public services"; and (5) new relocation and acquisition language reflecting recent amendments to the Uniform Relocation Act.

DATES: Comments Due Date: August 20, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Director, State and Small Cities Division, Office of Block Grant Assistance, room 7184, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 708-1322. TDD (202) 708-2565. (These are not toll-free numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. Receipt of FAX transmittals will not be acknowledged, but a sender may request confirmation of receipt by calling the Rules Docket Clerk, (202) 708-2084.

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506.0043. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235) ("Reform Act") as amended by the Cranston-Gonzalez National Affordable Housing Act ("NAHA"), amended Title I of the Housing and Community Development Act of 1974 ("Act"), by transferring the authority for making grants to Indian Tribes from the section 107 discretionary fund to the allocation and distribution of funds provisions of section 106 of the Act. Under section 106, as so amended, 1 percent of the title I appropriation, excluding the amounts appropriated for use under section 107, is allocated for grants to Indian Tribes. The allocated amount is to be distributed to Indian Tribes on a competitive basis in accordance with selection criteria "contained in a regulation promulgated by the Secretary after notice and public comment." The Department is issuing this proposed rule to comply with the requirement for publication for comment. The Department invites, in particular, public comment on the revisions to the rating system.

Section 102 of the Reform Act requires the Secretary to publish in the **Federal Register** a Notice of Fund Availability (NOFA) regarding assistance. In addition to announcing the availability of funds, the NOFA will set forth application procedures and selection criteria. The NOFA will replace the regional rating and ranking guides which formerly contained the selection criteria.

Effective April 2, 1989, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) was amended to, among other things, expand coverage. Under the current rule published by the Department of Transportation (see 54 FR 8912, March 2, 1989), codified at 49 CFR part 24, any person (family, individual, business, nonprofit organization, or farm) displaced on or after April 2, 1989, as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part is entitled to URA relocation assistance.

This proposed rule contains the URA subpart applicable to the ICDBG program.

For clarity during review of this rule by the public, part 571 has been republished in full with the revisions proposed in this rule making. The following revisions, however, are the most significant of the changes in part 571 contained in this proposed rule:

Subpart A—General Provisions

Section 571.4 Definitions

The definition of *Unemployment* will be removed from this section, because this term is not used in the body of the regulation.

Section 571.4(i) Low- and Moderate-Income Beneficiaries

This paragraph will define *low- and moderate-income* beneficiary as a family, household, or individual whose income does not exceed 80 percent of the median income for the area in which it is located. The following paragraph outlines the method the Department uses to calculate the median income for any area.

If the potential beneficiary is located in a metropolitan area, area median income is based on the metropolitan area's median income. If the potential beneficiary is located in a

nonmetropolitan area, the area median income is based on the median income of the county in which the beneficiary is located, or the median income of the entire nonmetropolitan area of the State in which the beneficiary is located, whichever is higher. HUD will use published section 8 income limits to determine whether a beneficiary is low- and moderate-income.

Subpart C—Eligible Activities

Section 571.201 Primary and national objectives

This section will adopt an overall low- and moderate-income benefit requirement of 70 percent. That is, 70 percent of CDBG funds for each grant must be for activities which benefit low- and moderate-income persons. (Imminent threat grants are not subject to this requirement.) This section also will make applicable the criteria for meeting one of the three national objectives of benefit to low- and moderate-income persons: prevention or elimination of slums and blight; or needs having a particular urgency, set forth in § 570.208 of part 570, subpart C. The proposed regulation will continue to impose these requirements administratively, although they are not statutorily required.

Subpart D—Single Purpose Grant Application and Selection Process

Section 571.300(f)(2)(i)

This section amends the application submission requirement for a community development statement to include an *updated* description of community development needs.

Section 571.302(a)(2) Capacity and Performance

This section will add, under § 571.302(a)(2)(ii)(B), "support of other HUD-assisted projects" as a new performance criterion for consideration.

Section 571.302(c) Application Rating System

This section will adopt new selection criteria to replace the "impact" and "quality" selection criteria currently used to rate and rank projects. Project categories are: Housing; community facilities; and economic development. Field offices will rate each project on a 100-point scale. The Department will publish periodic Notices of Fund Availability (NOFAs) which will further define and assign points within each category.

Section 571.302(e) Ties

This new paragraph (e) will precede Competition documentation, which will become paragraph (f). Currently, each field office detemines how to break ties among competing applications. In order to provide national consistency while maintaining a degree of regional flexibility, this section requires each field office to break ties, first, by funding any applications that can be fully funded. Then, if a tie still exists, the field office will use one or more "tiebreakers" described in the regulation. Periodic NOFAs will indicate which tiebreakers each field office will use.

Section 571.303 Housing

This section will outline for HUD field offices the factors to be used by them to rate housing applications. This category consists of three components: Housing rehabilitation; land to support new housing; and new housing construction. Housing rehabilitation and new housing construction each consist of three parts: "Project need and design"; "planning and implementation"; and "leveraging". Land to support new housing consists of two parts: "Project need and design"; and "planning and implementation".

In instances where Tribes establish Indian Housing Authorities (IHAs) and receive HUD housing assistance, this section will require Tribes to certify that tenants' and homeowners' payments are current, before using CDBG funds to assist residents.

Section 571.303(c) New Housing Construction/Direct Homeownership Assistance

This section will add "new housing construction/direct homeownership assistance" as a component under the housing category. New housing construction typically is ineligible for assistance under 24 CFR 570.207(b)(3). However, under § 570.204(a)(2), as modified by § 571.202, the applicant may designate a subrecipient—a Tribal-based nonprofit organization or local development corporation—to carry out the activity. Section 907 of NAHA adds direct homeownership assistance to the list of activities eligible for CDBG funding. This activity will be eligible until homeownership assistance is available under title II of NAHA (October 1, 1992 or 1993, as determined by the Secretary). Grantees may provide direct assistance to facilitate and expand homeownership among low- and moderate-income persons. This assistance is not considered to be a public service.

Section 571.304 Community Facilities

This section will outline for HUD field offices the factors they will use to rate community facilities applications. This category consists of two components: Infrastructure and buildings. Both components consist of three parts. "project need and design"; "planning and implementation"; and "leveraging."

Section 571.305 Economic Development

This section will outline for HUD field offices the factors they will use to rate economic development applications. This category consists of the three parts: "Project viability"; "job creation"; and "additional considerations."

Section 571.306 Additional Features of the Selection Process

This section will be removed because its provisions have essentially been incorporated in other revisions in the current selection process.

Subpart F—Grant Administration

Section 571.504 Grant Closeout Procedure

This new section explains which form is required for grant closeout and the applicability of 24 CFR 570.509.

Subpart G—Other Program Requirements

Section 571.602 Relocation and Acquisition

This section will set forth policies governing displacement, relocation, and real property acquisition under this part. These policies conform the regulations in this part to the requirements of 49 CFR part 24, the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and related HUD policies.

Section 571.606 HUD Housing Assistance

This section will be removed. Section 571.303 now includes the substance of this section. Section 571.303 outlines performance considerations, including those applicable to Tribes that have established an Indian Housing Authority (IHA) and have obtained housing assistance from HUD.

Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the

National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would establish criteria for funding eligible recipients among Indian Tribes, but have no impact on small entities.

This rule was listed as Item No. 1247 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44558) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. (Amendments added from the 1990 Act were not included in the October Agenda description.)

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. While the rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, and 14.229.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 571.300, 571.306, 571.500, 571.502, 571.504, and 571.700 of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

PROPOSED RULE—FR-2880 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual responses	Hours per response	Burden hours
Application: SF 424 (HUD-4121, 4122, 4123) and maps	§ 571.300	260	1.1	286	60	17,160
Preaward Requirements (HUD-4123, 4125, 4126)	§ 571.306	120	1	120	20	2,400
Supporting Documentation (not required of all grantees)	§ 571.500	10	1	10	20	200
Force Account Approval (only required of grantees using force account)	§ 571.502	40	1	40	5	200
Status Report (Monitoring and Annual Reports)	§ 571.700	120	1	120	10	1,200
Financial Status Report (SF-269)	§ 571.504	120	1	120	5	600
Totals		670	1.04	696	31.3	21,760

List of Subjects in 24 CFR Part 571

Alaska, Community development block grants, Grant programs-housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 571 would be revised to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

Sec.
571.1 Applicability and scope.
571.2 Program objectives.
571.3 Nature of program.
571.4 Definitions.
571.5 Eligible applicants.
571.6 Technical Assistance.
571.7 Waivers.

Subpart B—Allocation of Funds

571.100 General.
571.101 Regional allocation of funds.

Subpart C—Eligible Activities

571.200 General.
571.201 Primary and national objectives.
571.202 Nonprofit organizations.
571.203 Administrative costs.

Subpart D—Single Purpose Grant Application and Selection Process

571.300 Application requirements.
571.301 Screening and review of applications.
571.302 Selection process.
571.303 Housing rating category.
571.304 Community facilities or public services rating category.
571.305 Economic development rating category.
571.306 Funding process.
571.307 Program amendments.

Subpart E—Imminent Threat Grants

571.400 Criteria for funding.
571.401 Application process.
571.402 Environmental review.
571.403 Availability of funds.

Subpart F—Grant Administration

571.500 General.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 571.1 Applicability and scope.

The policies and procedures described in this part apply only to grants to eligible Indian Tribes and Alaskan native villages under the Community Development Block Grant (CDBG) Program for Indian Tribes and Alaskan native villages.

§ 571.2 Program objectives.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this part is for the support of community development activites which further this objective. This assistance is not to be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 571.3 Nature of program.

The ICDBG Program is competitive in nature. The demand for funds far exceeds the amount of funding available. Therefore, selection of eligible applicants for funds will reflect consideration of the relative adequacy of applications in addressing locally determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 571.4 Definitions.

(a) *Act* means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

(b) *Chief executive officer* means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan native village.

(c) *Eligible Indian populations* means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan native villages eligible under this part.

(d) *Extent of overcrowded housing* means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time.

(e) *Extent of poverty* means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

(f) *Field offices* means the HUD Offices of Indian Programs or other HUD field offices having responsibility for the Indian CDBG Program.

(g) *HUD* means the Department of Housing and Urban Development.

(h) *ICDBG Program* means the Indian Community Development Block Grant Program.

(i) *Identified service area* means:

(1) A geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area;

(2) the Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the Tribe; or

(3) the entire area under the jurisdiction of a Tribe which has a population of members of under 10,000.

(j) *Low- and moderate-income beneficiary* means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

(k) *Secretary* means the Secretary of HUD.

(l) *Tribal government, Tribal governing body* or *Tribal council* means the recognized governing body of an Indian Tribe or Alaskan native village.

(m) *Tribal resolution* means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

(n) *URA* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

§ 571.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (a) of this section, or as a Tribal organization as provided in paragraph (b) of this section, by the application submission date.

§ 571.6 Technical assistance.

On an annual basis, each field office will provide technical assistance to eligible applicants for these purposes:

(a) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(b) To inform eligible applicants of changes in the program.

§ 571.7 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a field office determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants* (1) *Ceilings.* Each field office may establish grant ceilings for single purpose and imminent threat grant applications.

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the field office may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner. In considering an economic development project, the field office shall take into account the income stream that the applicant will receive, and limit the grant to the amount needed to make the project feasible, with a rate of return that is not excessive.

§ 571.101 Regional allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the field offices responsible for the program on the following basis:

(1) Each field office will be allocated $500,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each field office based on the most recent data available from reliable sources referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each field office's share of the total extent of overcrowded housing among the eligible Indian population.

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case the Secretary may establish other criteria to determine an allocation formula for distributing funds to the field offices.

(c) Data used for the allocation of funds will be based upon the Indian population of those Tribes and villages that is determined to be eligible ninety (90) days before the beginning of each fiscal year.

Subpart C—Eligible Activities

§ 571.200 General.

The eligibility requirements of part 570, subpart C of this Chapter—Eligible Activities—apply to grants under this part, except for those provisions which are specifically stated as applying only to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.201 Primary and national objectives.

(a) Not less than 70 percent of each single purpose grant must be used for activities that benefit low- and moderate-income persons under the criteria set forth in 24 CFR 570.208(a). In determining the percentage of funds used for such activities, the provisions of 24 CFR 570.200(a)(3) (i), (iv), and (v) shall apply. The requirements of this paragraph do not apply to imminent threat grants funded under subpart E of this part.

(b) In addition to the requirement of paragraph (a) of this section, each activity must meet one of the national objectives pursuant to the criteria set forth in 24 CFR 570.208.

§ 571.202 Nonprofit organizations.

Tribal-based nonprofit organizations replace neighborhood-based nonprofit organizations under 24 CFR part 570, subpart C. A Tribal-based nonprofit organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 571.203 Administrative costs.

(a) For purposes of this part, technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in 24 CFR part 570, subpart C.

(b) Technical assistance costs cannot exceed ten percent of the total grant award.

As used in the part, "technical assistance" means the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 571.300 Application requirements.

(a) *General.* Applications are required for assistance under this part. An applicant shall submit only one application, which may include an unlimited number of eligible projects, e.g., housing or public facilities. Each project within a single purpose grant applications will have each project rated separately, i.e., according to the rating category under which it fits. Field offices will fund the highest ranking projects from all applications, up to the grant ceiling. Applications shall include projects which can be completed within a reasonable period of time (generally not more than two years).

(b) *Application information.* Each field office shall recommend its application submission deadline to HUD Headquarters. Headquarters shall publish a Notice of Funding Availability (NOFA) in the **Federal Register** not less than 30 days before the deadline(s) for application submission. The NOFA will provide more detail regarding:

(1) Information about the availability of funds;

(2) A description of the forms and procedures for completing an application and the field offices' deadlines. Such description shall be designed to help eligible applicants apply for the funds; and

(3) The criteria used to select applications.

(c) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations when applicable.

(d) *Costs incurred by applicant.* (1) Notwithstanding any provision in part 570 of this chapter, HUD will not reimburse or recognize any costs incurred before submission of the single purpose grant application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the field office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(e) *Publication of community development statement.* Applicants for single purpose grants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 571.604.

(f) *Application components.* The NOFA will provide more detail about the application components outlined in this paragraph. Applicants for single purpose grants shall submit an application to the appropriate field office in a form prescribed by HUD. The application shall include:

(1) Standard form 424;

(2) Community development statement which includes:

(i) A brief description or an updated description of community development needs;

(ii) A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing a project; and

(iii) Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share; and amount of other funds by source; and

(iv) Components that address the relevant selection criteria.

(3) A map showing project location, if appropriate; and

(4) Certification in the form of an official Tribal resolution that citizen participation requirements of § 571.604 have been met.

(5) As required by Section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), applicants that reasonably expect to receive more than $200,000 of funding from HUD during the fiscal year must provide the following information:

(i) Other related assistance that is expected to be made available for the project by the Federal government, State government, unit of local government, Tribe, Alaskan native village, or any agency or instrumentality of the above.

(ii) Name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project include but are not limited to developers, contractors, and consultants involved in the application for assistance or the planning, development and implementation of the project or activities. Residency of an individual in housing for which assistance is being sought is not considered a pecuniary interest.

During the period that the application is pending, or the project is open, the applicant shall update the aforementioned disclosure within 30 days of any substantial change.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 571.301 Screening and review of applications.

(a) *Criteria for acceptance.* Each field office will initially screen applications for single purpose grants. They will accept applications if:

(1) They are received on or before the submission date;

(2) The applicant is eligible;

(3) The proposed activities are eligible; and

(4) They contain substantially all the components specified in § 571.300(f). Applications failing this initial screening shall be rejected and returned to the applicants unrated.

(b) *Demographic data.* HUD will review and accept demographic data provided by an applicant if, in HUD's determination the data are of the quality described in § 571.300(c). Where demographic data provided by an applicant are unacceptable, HUD will use the best available data at its disposal.

(c) *Grant ceiling.* HUD will review applications for compliance with grant ceilings that field offices establish.

(d) *Information submitted on request.* A field office shall notify applicants in writing of any technical deficiencies in their applications. Applicants will have 14 calendar days from the date of the field office notification to correct any technical deficiences. A technical deficiency means that an application lacks one or more elements required as part of a full application, but which is unnecessary to conduct the rating and ranking process. The field office also may request information to resolve ambiguities in the application and may, in its discretion, request that an applicant submit information that may help to clarify an application that, in the field office's view, contains information that is inconsistent with known facts or data. Periodic NOFAs may further define technical deficiences and the circumstances under which additional information will be requested. Applicants may submit only the information requested by HUD. Applicants may not submit information that will enhance a project's rating, and a new project(s) may not be substituted for one(s) proposed in the original application. The field office shall disqualify applicants that fail to submit the information requested if the field office determines that the applicant failed to meet the threshold requirements or to show compliance with requirements of this part, or if it determines that information is insufficient to make a rating decision.

§ 571.302 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests of § 571.301 to be rated and ranked, field offices must

determine that the following requirements have been met:

(1) *Community development need and appropriateness.* (i) The applicant's project(s) directly impacts on its community development needs;

(ii) The costs are reasonable;

(iii) The project(s) is appropriate for the intended use; and

(iv) The project(s) is usable or achievable (generally within a two-year period). If in the judgment of the field office, available data indicate that the proposed project(s) is inconsistent with the applicant's community development needs, its costs are unreasonable, it is inappropriate for the intended use, or not usable generally within two years, the field office shall determine that the applicant has not met this threshold requirement, and shall reject such project(s) from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that previously have participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the field office determines that the applicant does not have or cannot obtain the capacity to undertake the project(s), such project(s) will be rejected from further consideration.

(ii) *Performance*—(A) *Community development.* Performance determinations are made through the field office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* The applicant has taken actions within its control to facilitate the provision of housing assistance for low- and moderate-income members of the Tribe or village. Any action to prevent the provision or operation of assisted housing for low- and moderate-income persons also shall be evaluated in terms of whether it constitutes inadequate performance by the applicant. If inadequate performance is found, the applicant shall be rejected from further consideration. Subsequent applicants also will be similarly disqualified in subsequent competitions unless the applicant has taken corrective actions within its control.

(C) *Previous audit finding and outstanding monetary obligations.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment sehedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding(s) is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear the audit finding(s). In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Application rating system.* (1) Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competititvely within each field office's jurisdiction. Field offices may conduct separate competitions among applicants on the basis of size.

(2) Periodic NOFAs will further weight and define the rating factors contained in this subpart. Each field office will rate applications on the basis of their responsiveness to the factors contained in this subpart and in the periodic NOFAs.

(3) In addition to meeting the requirements of this section, which apply to all applications, the field office will examine each project submitted to determine in which one of the three rating categories set out in § 571.303 through §571.305 the project most appropriately belongs. The project then will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component is 100, which is the maximum any project can receive.

(4) Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the application's other component(s). If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

(c) *Final ranking.* All projects will be ranked against each other according to the point totals they receive, regardless of the rating category or component under which the points were received. Projects will be selected for funding based on this final ranking, to the extent that funds are available. If the field office determines that an insufficient amount of money is available to fund adequately a project, it may decline to fund that project and fund the next highest ranking project(s) for which adequate funds are available.

HUD may select additional projects for funding, if one of the higher ranking projects is not funded, or if additional funds become available.

(d) *Ties.* Field offices shall approve projects involved in a tie that can be fully funded over those that cannot be fully funded. Only when such approval does not resolve a tie, shall the field office resort to one or more of the methods listed below ("tiebreakers"). Each field office's choice(s) of tiebreaker(s) will be published in the NOFA that is issued before each funding competition.

(1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the most low- and moderate-income persons.

(4) The application that benefits the highest percentage of low- and moderate-income persons.

(5) The applicant with the fewest projects that can be funded in the current year's competition.

(6) The applicant with the fewest active grants.

(e) *Competition documentation.* Field offices shall make available for public inspection each application and all related documentation and information, including letters of support, that indicate the basis on which the award was made or denied. Each field office shall make this documentation available for a period of at least five years starting 30 days from the date on which the award is made.

(f) *Procedural error.* If a field office makes a procedural error in the application and selection process that, when corrected, will result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant in the next year without further competition.

(g) *Setaside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year,

other criteria pertinent to the setaside may be used to select projects for funding from the setaside. The selection of projects for setaside funding may be competitive or noncompetitive.

§ 571.303 Housing rating category.

The "housing rating" category consists of three components: Housing rehabilitation; land to support new housing; and new housing construction/direct homeownership assistance. Housing rehabilitation and new housing construction/direct homeownership assistance consist of three parts: Project need and design; planning and implementation; and leveraging. Land to support new housing consists of two parts: Projects need; and planning and implementation. Housing projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points. In those instances where a Tribe has established or joined an Indian Housing Authority (IHA) and has obtained housing assistance from HUD, its compliance with the resolution set out in Article VIII of HUD's Model Tribal Ordinance will be a performance consideration under § 571.302. The applicant shall certify that it will use project funds to rehabilitate or construct units or to provide direct homeownership assistance only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit housing rehabilitation, new construction, or direct homeownership assistance in emergency situations.

(a) *Housing rehabilitation component.* All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application.

(1) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The percentage of project funds committed to bring the housing up to standard condition, as defined by the applicant.

(ii) Proposed project staffing plan.

(iii) The degree to which the applicant's selection policy gives priority to the neediest households.

(iv) Documentation of project need.

(2) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Rehabilitation policies, including adopted rehabilitation standards, rehabilitation selection criteria, and project planning documents.

(ii) Quality of post-rehabilitation maintenance policies.

(iii) Quality of cost estimates.

(iv) Cost effectiveness of the rehabilitation program.

(3) Leveraging (10 points). Applicants must provide documentation of the amount and sources of additional funds. This should include private contributions, including equity and loans, applicant funding, and other governmental funding.

(b) *Land to support new housing component.*

(1) Project need (40 points). The field office will consider the amount of land that the applicant already has that is available and suitable for new housing. (Applicants that have suitable land available will rate poorly on this factor.)

(2) Planning and implementation (60 points). The field office will consider the following when reviewing each application:

(i) Suitability of land to be acquired.

(ii) Housing resources that are committed at the time of project application.

(iii) Availability/accessibility of supportive services and employment opportunities.

(iv) Commitment that families will move into new housing.

(v) Land can be taken into trust or provisions have been made for taxes and fees.

(vi) Financial commitment for any infrastructure needed to support housing to be developed. (If needed infrastructure exists, maximum points will be awarded.)

(vii) Extent to which the proposed site meets the applicant's needs.

(c) *New housing construction/direct homeownership assistance component.* (1) New housing construction can only be implemented through a nonprofit organization that is eligible under § 571.202 or is otherwise eligible under 24 CFR 570.207(b)(3). If an applicant plans to provide direct homeownership assistance under section 907 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625) to low- and moderate-income homebuyers who will occupy existing units, or if an applicant plans to build housing covered by mortgage insurance under section 248 of the National Housing Act, the field office will not consider the provisions of paragraphs (c)(2)(i) (A) and (B) and (c)(3)(iv) of this section when rating the proposal. The remaining subparts will be weighted so that direct homeownership assistance and section 248 projects may receive a maximum of 100 points. All applicants for new housing construction grants must document that no other housing is available in the immediate reservation area that is suitable for the family to be assisted. All applications for new housing construction/direct homeownership assistance grants must contain the following documentation:

(i) No other sources can meet the needs of the household(s) to be served; and

(ii) Rehabilitation of the unit occupied by the family to be housed is not economically feasible; or

(iii) The family to be housed currently is in an overcrowded unit (sharing unit with other household(s)); or

(iv) The family to be housed has no current residence.

(2) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The applicant:

(A) Either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time; or

(B) Has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time due to a lack of funds.

(ii) Adopted housing construction policies and plan.

(iii) Beneficiary identification (all households are low- and moderate-income). The households to be served have documented needs for housing assistance that cannot be met from other sources.

(3) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Occupancy standards.

(ii) Site acceptability, including consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

(iii) Energy conservation design.

(iv) Housing survey.

(v) Cost effectiveness.

(4) Leveraging (10 points). Applicants must provide documentation of the amount and sources of additional funds. This should include private contributions including equity and loans, applicant funding, and other governmental funding.

§ 571.304 Community facilities or public services rating category.

The *community facilities or public services rating* category consists of three components: Infrastructure, such

as water, sewer or roads; buildings, such as a community center or child care facility; and public services, such as drug counselling. Each component consists of three parts: project need and design; planning and implementation; and leveraging. Community facilities or public services projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points.

(a) *Infrastructure component.*

(1) Project need and design (45 points). The project will accomplish the following:

(i) Meet an essential community need.

(ii) Benefit the neediest segment of the population.

(iii) Provide infrastructure that currently does not exist either within or outside the community or reservation *or* replace an existing facility that no longer functions adequately to meet the current needs.

(iv) Eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (45 points). The application will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale and cost.

(iii) That the project will serve a substantial number of low- and moderate-income persons.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

(b) *Buildings component.*

(1) Project need and design (45 points). The project will accomplish the following:

(i) Benefit the neediest segment of the population by targeting them to the greatest extent possible.

(ii) Provide a building that currently does not exist either within or outside the community or reservation *or* replace an existing facility that no longer functions adequately to meet the current needs.

(iii) Provide multiple uses or multiple benefits.

(iv) Meet an essential community need.

(v) Eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (45 points). The application will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale, and cost.

(iii) That the project will serve a substantial number of low- and moderate-income persons.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

(c) Public services.

(1) Project need and design (45 points). The project will accomplish the following:

(i) Meet and essential community need.

(ii) Benefit the neediest segment of the population.

(iii) Provide a public service that currently does not exist either within or outside the community or reservation *or* expand and improve an existing service to meet growing needs.

(iv) Eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (45 points). The application will show:

(i) A viable plan for continuing provision of the service(s).

(ii) An appropriate and effective design, scale and cost.

(iii) That the project will serve a substantial number of low- and moderate-income persons.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

§ 571.305 Economic development rating category.

The *economic development rating* category has only one component, consisting of three parts: project viability; permanent full-time job creation; and additional considerations. Economic development projects may receive a maximum of 100 points. The application shall demonstrate the need for grant assistance by providing a determination that the assistance is appropriate to implement an economic development project and is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the project. In making this determination, the field office should consider the income stream that will be generated by the project. Projects with excessive income streams must contain a repayment provision if the funds are going to a nongovernmental entity.

(a) *Project viability* (60 points). The application will be rated on the adequacy and quality of the following subparts:

(1) Business/management plan, which includes elements such as: management capacity, organization, and market feasibility.

(2) Financial analysis, which includes the rate of return.

(3) High but not excessive rate of return *or* a lower rate of return and evidence that the business will provide a needed product or service *or* a lower rate of return and evidence that the business will employ a significant number of low- and moderate-income members of the Tribe or village.

(4) High leveraging ratio.

(b) *Permanent full-time job creation* (30 points). The application will be rated on the adequacy and quality of the following subparts:

(1) CDBG cost per job.

(2) CDBG cost per job targeted to low- and moderate-income persons.

(3) Quality of jobs targeted to low- and moderate-income persons.

(4) Employer commitment to provide training opportunities.

(c) *Additional considerations* (10 points). The project will accomplish one or more of the following:

(1) Use, improve, and expand members' special skills.

(2) Provide spin-off benefits beyond the initial economic development benefits.

(3) Provide special opportunities for residents of federally assisted housing.

(4) Provide benefits to other businesses owned by Indians or Alaskan natives.

§ 571.306 Funding process.

(a) *Notification.* Field offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the field offices in accordance with § 571.100(b).

(b) *Pre-award requirements.* (1) Upon notification by HUD of successfully competing for a grant, the applicant shall submit, on forms prescribed by HUD, the following:

(i) Implementtion schedule.

(ii) Certifications.

(iii) Cost information, if changes have occurred or if the field office has adjusted the original grant request.

(2) Successful applicants also may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will be given an amount of time specified by the field office, between fifteen (15) and thirty (30) calendar days, to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the field office may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The field offices shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; and/or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(3) Grant amounts allocated for applicants unable to meet pre-award requirements will be offered to the next highest ranking unfunded project.

(4) New projects may not be substituted for those originally proposed in the application.

(c) *Grant award.* (1) As soon as HUD determines that the applicant has complied with the pre-award requirements and nothing has come to the attention of the field office which would alter the threshold determinations under § 571.302, the grant will be awarded. These regulations (*i.e.*, 24 CFR part 571) become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of 24 CFR part 58, except as otherwise provided in:

(i) 24 CFR 58.33, "Emergencies";

(ii) 24 CFR 58.34, "Exempt activities"; or

(iii) 24 CFR 58.22, "Activities," excepted from limitations on the commitment of funds and which are reimbursable under subpart C of 24 CFR part 570.

(3) HUD may impose other grant conditions where additional actions or approvals are required prior to the use of funds, such as:

(i) Pending site and neighborhood standards approval for a proposed housing project, if applicable;

(ii) Pending HUD approval of the use of Tribal work forces for construction or renovation activities in accordance with § 571.502; or

(iii) Pending receipt of other agencies' funding commitments required for the project. If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 571.307 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments involving the alteration of existing activities that will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under § 571.300(f) (1) and (4), as well as any changes to the information requested under § 571.300(f) (2), (3) and (5).

(1) Amendments of $10,000 or more shall address all the rating parts and subparts of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to complete promptly the modified or new activities;

(iii) Compliance with the requirements of § 571.604 of this part for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than $10,000 shall be approved subject to meeting the requirements of paragraphs (b)(1) (ii), (iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 571.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, the field office may make funds available under this subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature, which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or Federal funding sources cannot be made available to alleviate the threat.

§ 571.401 Application process.

(a) *Letter to proceed.* The field office may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 571.300(f). Applications which meet the requirement of this section may be approved by the field office without competition.

§ 571.402 Environmental review.

In accordance with 24 CFR 58.34(a)(8), grants for imminent threat to health or safety are exempt from some or all of the environmental review requirements of part 58 of this title, to the extent provided.

§ 571.403 Availability of funds.

Field offices may set aside up to 15 percent of their allocation of funds under this part for imminent threat grants. The only funds reserved for imminent threat are those set aside by the field office each year. A field office may not retain imminent threat funds after the date upon which it receives its allocation for the succeeding fiscal year. Any imminent threat funds remaining will be used as if they are a part of the new allocation of funds. Field offices must correctly indicate, however, the fiscal year the residual funds were originally allocated when the funds are awarded to applicants.

Subpart F—Grant Administration

§ 571.500 General.

The requirements of part 570, subpart J of this chapter Grant Administration—apply to grants under this part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities—HUD administered programs, and with the modifications stated in this subpart.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 571.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan native village as the operating agency to undertake activities assisted under this part. The Indian Tribe or Alaskan native village itself, however, shall be the applicant. Designation of an operating agency does

not relieve the Indian Tribe or Alaskan native village of its responsibility to assure that the program will be administered in accordance with all HUD requirements, including these regulations.

§571.502 Force account construction.

(a) The use of Tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be listed on the Tribal payroll and are employed directly by an arm, department or other governmental instrumentality of the Tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 571.307(b) or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in 24 CFR 85.36(h) is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

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§ 571.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "Tribal organizations" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians and Alaskan natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD field office one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid is received, request field office review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) preferences and opportunities for training and employment shall be given to Indians and

(B) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties of this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance.

§ 571.504 Grant closeout procedure.

Within 90 days of the date that HUD determines the grant has met the criteria for closeout, the grantee shall submit to HUD a completed Financial Status Report (SF–269). In addition, the requirements of 24 CFR 570.509, Grant closeout procedures, apply to the ICDBG program.

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Subpart G—Other Program Requirements

§ 571.600 General.

The following requirements of 24 CFR part 570, Subpart K—Other Program Requirements—apply to grants under this part.

(a) 24 CFR 570.605, "National Flood Insurance Program."

(b) 24 CFR 570.608, "Lead-based paint."

(c) 24 CFR 570.609, "Use of debarred, suspended, or ineligible contractors or subrecipients."

(d) 24 CFR 570.610, "Uniform administrative requirements and cost principles."

§ 571.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that recipients comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, or against an otherwise qualified handicapped individual.

(b) A recipient shall comply with the provisions of title II of Public Law 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "funded in whole or in part with funds made available under this part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.602 Relocation and acquisition.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) the location of the suitable, safe and habitable dwelling to be made available for the temporary period;

(iii) the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) the provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655), as implemented by 49 CFR part 24.

(d) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Obtain HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request for such approval a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property.

(e) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the grantee. A lower income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of

that determination to the HUD Field Office.

(f) *Responsibility of grantee.* The grantee shall certify that it will comply (*i.e.*, provide assurance of compliance as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions. The grantee shall maintain records in sufficient detail to demonstrate compliance with this section. The cost of relocation payments and other relocation assistance shall be paid from funds provided by this part or such other funds as may be available to the grantee from any other source.

(g) *Displaced person.* (1) For purposes of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. This includes any permanent, involuntary move for an assisted activity, including any permanent move from real property that is made:

(i) After notice by the grantee or property owner to move permanently from the property, if the move occurs on or after the date of the submission of an application for financial assistance by the grantee to HUD that is later approved for the requested activity.

(ii) Before the date of the submission of the application requesting assistance, if either HUD or the grantee determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between the grantee and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) the tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connnection with the temporary relocation; or

(*2*) other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if

(i) The person moved into the property after the submission of the application for financial assistance to HUD, and, before signing a lease or commencing occupancy, is provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that the person will not qualify as a displaced person;

(ii) A person who is not displaced, as defined under 49 CFR 24.2(g)(2).

(iii) A person who the grantee determines is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered under this section.

(h) *Initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation, demolition, or non-State agency acquisition of the real property, the term "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person.

§ 571.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

§ 571.604 Citizen participation.

(a) In order to permit members of Indian Tribes and Alaskan native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of citizen involvement which, at the least, include the following:

(1) Furnishing members information concerning amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of members on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by members.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected members an opportunity to examine its contents and to submit comments.

(4) Affording members an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) Considered any comments and views expressed by members and, if it deems it appropriate, modified the application accordingly, and

(2) Made the modified application available to members.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 571.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall

comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58.

§ 571.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 570.203 or § 570.204).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who have or had any functions or responsibilities with respect to Community Development Block Grant (CDBG) activities assisted under this part, or who are in a position to participate in a decision, or gain inside information about such activities, may obtain a personal or financial interest or benefit from these activities. Further, such persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and such persons may not, during their employment or tenure in office and for one year thereafter, have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this title, receiving funds under this part.

(d) *Exceptions requiring HUD approval*—(1) *Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Subpart H—Program Performance

§ 571.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the field office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress in completing activities, the work remaining, changes in the implementation schedule, and a breakdown of funds expended on each approved project;

(b) *Grantee assessment.* Description of the effectiveness of funded activities in meeting the recipient's community development needs; and

(c) *Environment.* (1) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(2) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

(Approved by the Office of Management and Budget under Control No. 2506–0043.)

§ 571.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 571.702 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the recipient has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprograming is subjected to the environmental review procedures of Part 58 of the title;

(6) Advise the recepient to reimburse the recipient's program account or line of credit in any amount improperly expended;

(7) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(8) Suspend the line of credit until corrective actions are taken.

§ 571.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Prior to making such grant reduction or withdrawal, the recipient also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the field office determines, on the basis of a review of the grant recipient's performance, that the objectives set forth in § 571.701 (a)(2) or (a)(3) have not been met, the field office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 571.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply with any provision of this part even after corrective actions authorized under § 571.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. [The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take action requiring reasonable notice and opportunity for a hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: May 22, 1991.

S. Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-14801 Filed 6-20-91; 8:45 am]

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federal register

Friday
June 21, 1991

Part VII

Department of Energy

Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel; Extension of Comment Period; Notice

DEPARTMENT OF ENERGY

Extension of Public Comment Period for the Proposed Finding of No Significant Impact for the Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The Department of Energy (DOE) has prepared an Environmental Assessment (DOE/EA–0443) for the Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel (Off-Site Fuels Policy). On May 23, 1991, the DOE published in the **Federal Register** (56 FR 23696–23698) a Proposed Finding of No Significant Impact for a 30-day public review and comment period. In response to requests, the DOE is extending the period for public comment to August 1, 1991.

For further information about the proposed action, or to obtain copies of the Environmental Assessment, contact Lynn Wade, DP–143, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353–6826. Comments on the Proposed FONSI should be sent to Lynn Wade at the address listed above. Comments should be postmarked by August 1, 1991, to ensure consideration. Comments postmarked after August 1, 1991, will be considered to the extent practicable.

For information regarding the NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

Issued at Washington, DC, this 20th day of June, 1991.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91–15041 Filed 6–20–91; 11:59 am]

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H.J. Res. 91/Pub. L. 102-57

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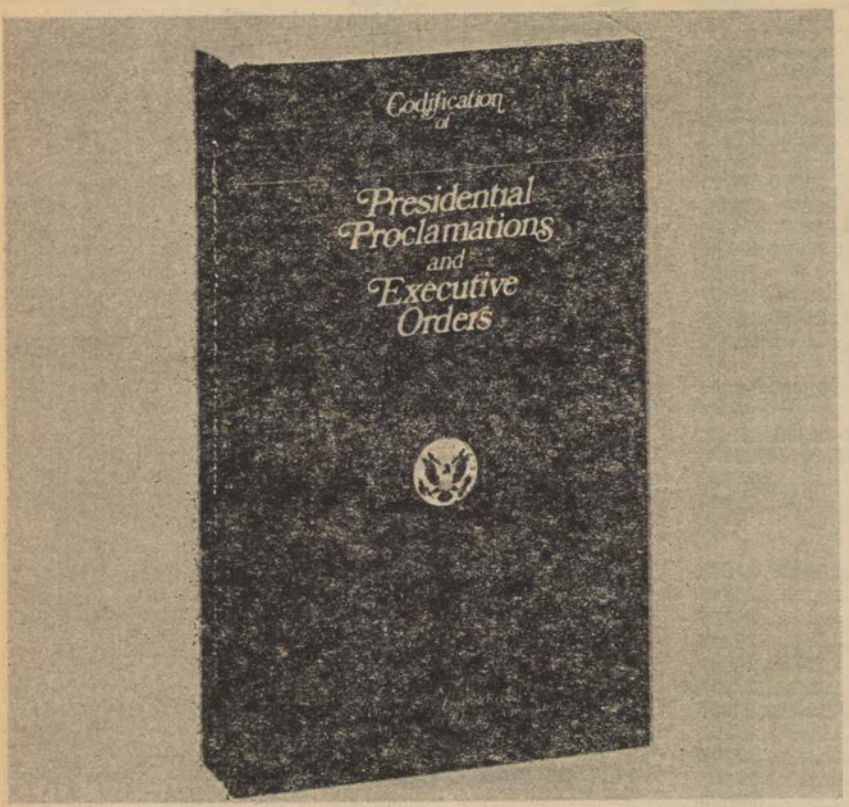

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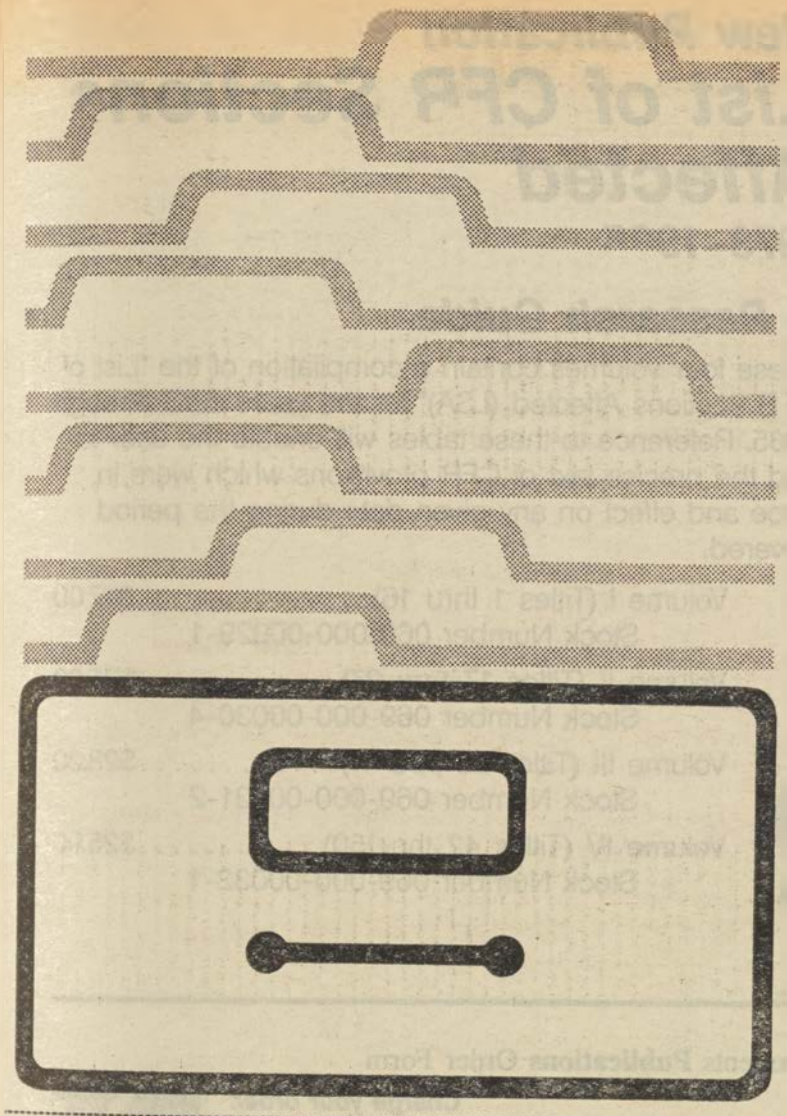

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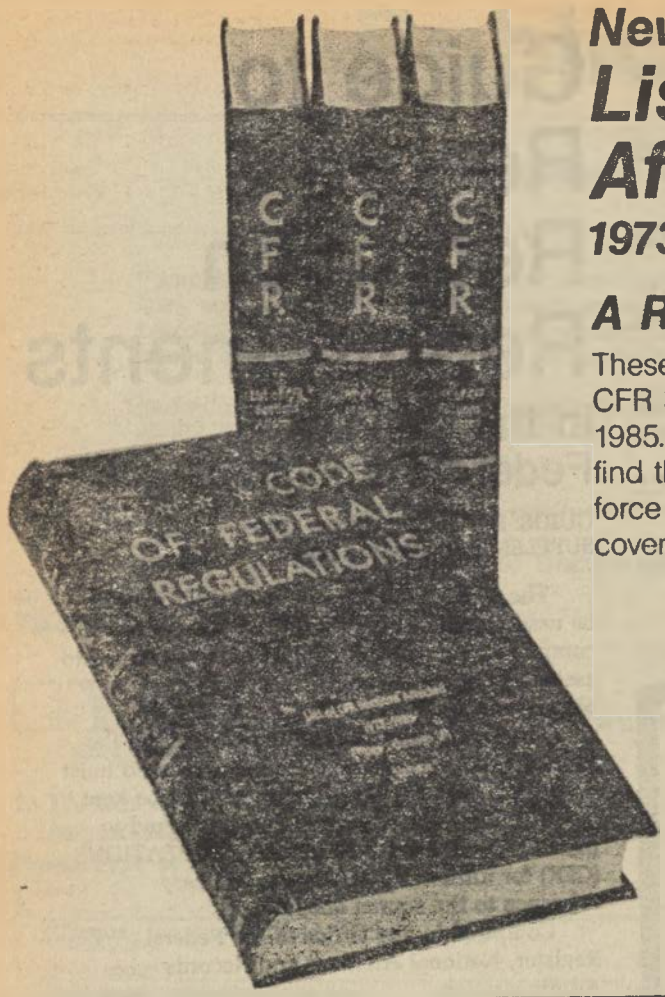

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